

**Request for Proposals**

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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**DECLARATION OF RESTRICTIVE COVENANTS AND USE AGREEMENT  
FOR MILITARY HOUSING PROJECT**

**by and between**

**SECRETARY OF THE AIR FORCE**

**and**

**[NAME OF PROJECT OWNER], as Project Owner**

**Dated \_\_\_\_\_, 199\_\_**

**Robins AFB, Warner Robins, Georgia**

## Request for Proposals

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West Robins Housing Privatization Project, UHHZ 974012

---

### DECLARATION OF RESTRICTIVE COVENANTS AND USE AGREEMENT FOR MILITARY HOUSING PROJECT

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#### TABLE OF CONTENTS

	<u>Page</u>
<b><u>ARTICLE I. DEFINITIONS; INTERPRETATION</u></b> .....	2
1. <b>Definitions</b> .....	2
2. <b>Interpretation.</b> .....	6
3. <b>Incorporation of Solicitation and Selected Proposal.</b> .....	7
<b><u>ARTICLE II. BENEFICIARIES, APPLICATION AND TERM</u></b> .....	7
4. <b>United States is Intended Beneficiary of Use Agreement</b> .....	7
5. <b>Mutuality of Benefit and Obligation; Covenants to Run with the Land</b> .....	7
6. <b>Duration and Termination.</b> .....	8
<b><u>ARTICLE III. NATURE OF UNDERTAKING, OWNERSHIP AND USE</u></b> .....	8
7. <b>Private Undertaking.</b> .....	8
8. <b>Title to Improvements</b> .....	9
9. <b>Use of Property and Zoning.</b> .....	9
<b><u>ARTICLE IV. CONSTRUCTION, RENOVATION AND DEMOLITION</u></b> .....	9
10. <b>Requirements for Construction and Renovation.</b> .....	9
11. <b>Revisions to Construction Management Plan or Final Plans.</b> .....	11
12. <b>Compliance with Construction Schedule.</b> .....	11
13. <b>Bonding Requirements</b> .....	12
14. <b>Construction Warranty</b> .....	12

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

15.	Inspection of Property and Improvements .....	13
<b><u>ARTICLE V. OPERATION AND MAINTENANCE</u></b> .....		13
16.	Operation and Maintenance of the Project .....	13
17.	Alterations of and Additions to Improvements .....	14
<b><u>ARTICLE VI. TENANTS AND LEASING REQUIREMENTS</u></b> .....		15
18.	Tenant Leases. ....	15
19.	Restrictions on Tenancy. ....	16
20.	Referral Tenants.....	16
21.	Rental Mix and Option to Review Structure of Referral Rental Rates.....	16
22.	Rental Rates for Referral Tenants. ....	17
23.	Priority Placement Plan for Referral Tenants. ....	18
24.	Limitations Concerning Other Tenants.....	18
25.	Tenant Information. ....	19
<b><u>ARTICLE VII. TRANSFER OF THE PROPERTY</u></b> .....		19
26.	Sale, Lease or Transfer of Property. ....	19
<b><u>ARTICLE VIII. APPLICABLE LAWS/ENVIRONMENTAL MATTERS</u></b> .....		21
27.	Compliance with Applicable Laws. ....	21
28.	Environmental Matters. ....	22
<b><u>ARTICLE IX. REQUIRED RESERVE ACCOUNTS</u></b> .....		23
29.	Capital Repair/Replacement Escrow Account. ....	23
30.	Construction Escrow Account. ....	25
31.	Imposition Escrows. ....	26
32.	Security Deposit Account. ....	27

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

---

33.	<b>Reinvestment Account.</b>	28
34.	<b>Tenant Security Deposit Account.</b>	29
35.	<b>Lockbox Account.</b>	29
	<b><u>ARTICLE X. INSURANCE REQUIREMENTS</u></b>	29
36.	<b>Risk of Loss.</b>	29
37.	<b>Types of Insurance Coverage.</b>	29
38.	<b>Evidence of Insurance Coverage.</b>	31
39.	<b>Notice of Insurable Events.</b>	32
	<b><u>ARTICLE XI. LIENS AND MORTGAGES</u></b>	32
40.	<b>Permitted Liens and Mortgages.</b>	32
41.	<b>No Cross-Default or Cross-Collateralization With Opportunity Site Parcels.</b>	33
42.	<b>Estoppel Certificate.</b>	33
43.	<b>Notice of Mortgage or Encumbrance.</b>	33
44.	<b>Foreclosure Purchaser.</b>	33
45.	<b>Notice and Opportunity to Cure.</b>	33
46.	<b>Mortgagee's Right to Postpone Termination.</b>	34
47.	<b>Delivery of Physical Possession of Property.</b>	35
48.	<b>Multiple Approved Mortgagees.</b>	35
	<b><u>ARTICLE XII. SECRETARY'S RIGHTS AND REMEDIES UPON DEFAULT</u></b>	35
49.	<b>Defaults.</b>	35
50.	<b>Effect of Defaults by Project Owner on Mortgages.</b>	36
51.	<b>Remedies.</b>	37

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

52.	<b>Reversion of Title to Secretary Following Defaults.</b>	38
53.	<b>Retention of or Resale of Reacquired Land and Improvements; Disposition of Proceeds.</b>	39
54.	<b>Indemnification.</b>	40
55.	<b>Lien for Sums Due.</b>	41
	<b><u>ARTICLE XIII. GENERAL PROVISIONS</u></b>	41
56.	<b>Recordation.</b>	41
57.	<b>Amendments.</b>	42
58.	<b>Relationship to Mortgage Loan Documents</b>	43
59.	<b>Notice.</b>	43
60.	<b>Books, Records, Accounts and Reports.</b>	44
61.	<b>General Provisions</b>	46

### LIST OF EXHIBITS

<b>EXHIBIT A</b>	<b>Legal Description of Land</b>
<b>EXHIBIT B</b>	<b>List of Prohibited Uses</b>
<b>EXHIBIT C</b>	<b>Form of Tenant Lease</b>
<b>EXHIBIT D</b>	<b>Housing Unit Mix and Designation by Pay Grade</b>
<b>EXHIBIT E</b>	<b>Applicable Percentage by Housing Unit Type</b>

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

---

### DECLARATION OF RESTRICTIVE COVENANTS AND USE AGREEMENT FOR MILITARY HOUSING PROJECT

(West Robins)

**THIS DECLARATION OF RESTRICTIVE COVENANTS AND USE AGREEMENT FOR MILITARY HOUSING PROJECT** (this "Use Agreement") is made and entered into as of \_\_\_\_\_, 199\_\_, by and between **THE UNITED STATES OF AMERICA represented by THE SECRETARY OF THE AIR FORCE (the "Secretary")**; and **[NAME OF PROJECT OWNER]**, a \_\_\_\_\_ (the "Project Owner").

#### RECITALS

A. The Secretary has chosen the Selected Proposal (as defined below) submitted by, or on behalf of, the Project Owner as the winning proposal in response to the Solicitation (as defined below).

B. Pursuant to the Solicitation and the Selected Proposal, the Secretary and the Project Owner have entered into the Contract of Sale (as defined below) pursuant to which the Secretary has agreed to sell and the Purchaser has agreed to purchase the Land (as defined below).

C. In consideration of, and as an inducement to, the Secretary's agreement to convey the Land and certain improvements located thereon to the Project Owner, the Project Owner has agreed to execute and deliver this Use Agreement for the purpose of setting forth certain terms and conditions relating to the Project Owner's responsibility for the design, construction, replacement, demolition, rehabilitation, ownership, operation and maintenance of a privately-owned rental housing development primarily for use by military personnel and their families assigned to Robins AFB (as defined below) located or to be located on the Land.

D. This Use Agreement shall be properly filed and recorded in the Office of the Clerk of Superior Court of Houston County, Georgia, and shall constitute a restriction upon the use of the Property (as defined below) subject to and in accordance with its terms.

**NOW THEREFORE**, in consideration of the above recitals, the Secretary and the Project Owner agree as follows:

#### **ARTICLE I. DEFINITIONS; INTERPRETATION**

1. **Definitions**. The terms defined in this Section 1 and in the Recitals (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Use Agreement shall have the respective meanings specified in this Section 1 and the Recitals.

"Accompanied Military Tenants" means active duty military personnel and their dependents (as

## **Request for Proposals**

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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defined in 37 U.S.C.A. §401) who are tenants of the Project or who are eligible to rent units in the Project.

"Act" means the 1996 Defense Authorization Act, Public Law 104-106, 110 Stat. 186, Title XXVIII, Subtitle A, Military Housing Privatization Initiative, as amended.

"Applicable Laws" means all federal, state, and local (city, county and otherwise) laws, rules, regulations, orders, ordinances, and other governmental standards and requirements which may be applicable to the Project Owner, the Land and the Improvements, and/or any Person located at or near the Property during the term of this Use Agreement whether presently in force or enacted after the Effective Date.

"Authorized Representative" means with respect to all parties to this Use Agreement, an officer, a principal, an agent or other person who is authorized to act on behalf of and whose actions are binding upon that party. As of the date of execution of this Use Agreement, the Authorized Representative of the Project Owner is \_\_\_\_\_; and of the Secretary is \_\_\_\_\_. Any party may designate additional or substitute persons to act as an Authorized Representative on its behalf at any time by a written notice to the other parties.

"Business Day" means any day other than a Saturday, a Sunday, or a day on which the federal government is generally closed by statute, regulation or executive order.

"City" means the City of Warner Robins, Georgia.

"Construction Management Plan" means the construction management plan with respect to the Improvements submitted as part of the Selected Proposal and approved by the Secretary, as the same may from time to time be supplemented or amended with the Secretary's approval.

"Contract of Sale" means the agreement between the Secretary and the Project Owner pursuant to which Secretary has agreed to sell and the Purchaser has agreed to purchase the Land.

"County" means Houston County, Georgia.

"Deed" means any deed, assignment, lease, or other instrument conveying fee title or a leasehold interest in any part of the Property.

"Direct Loan" means any loan made to the Project Owner by the Secretary.

"Direct Loan Documents" means the documents executed by the Project Owner and the Secretary in connection with the Direct Loan.

"Effective Date" means \_\_\_\_\_, 199\_\_.

"Final Plans" means the final development plans and specifications with respect to the Improvements as approved by the Secretary, as the same may from time to time be supplemented or

## **Request for Proposals**

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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amended with the Secretary's approval.

"Government" means the federal government of the United States of America, including any department or agency thereof.

"Guaranteed Lender" means **[NAME OF GUARANTEED LENDER]** and its successors and permitted assigns, who shall be the holder of a loan guaranteed by the Secretary pursuant to the Guaranty Agreement.

"Guaranteed Loan" means any loan made to the Project Owner by a Guaranteed Lender.

"Guaranteed Loan Documents" means the documents executed by the Project Owner and the Guaranteed Lender in connection with a Guaranteed Loan.

"Guaranty Agreement" means the Military Housing Loan Guaranty executed by the Guaranteed Lender and the Secretary which evidences the terms and conditions under which the Secretary has agreed to guarantee payment of the Guaranteed Loan.

"Housing Allowance" means the Basic Allowance for Housing (BAH), or such other sum as is allotted to each service member by the Government to cover the cost of housing to be used as a personal residence based on the service member's rank and number of dependents, as such amount is established and published by the Government in the Federal Register or elsewhere.

"Housing Units" or "units" means the six hundred and seventy (670) units of family housing to be located on the Land that are required to be constructed and/or renovated, and to be operated and maintained by, the Project Owner in accordance with the Solicitation, the Selected Proposal, the Final Plans and this Use Agreement.

"Improvements" means the Housing Units and the other buildings, structures, and other improvements located on the Land which are required to be constructed and/or renovated and to be maintained, by the Project Owner in accordance with the Solicitation, the Selected Proposal, and this Use Agreement.

"Installation" or "Robins AFB" means Robins AFB, Warner Robins, Georgia.

"Land" means the real property located in Houston County, Georgia, as more particularly described on attached Exhibit A.

"Land Records" means the Office of the Clerk of Superior Court of Houston County, Georgia.

"Military Tenants" means collectively, Accompanied Military Tenants and Unaccompanied Military Tenants.

"Operations and Maintenance Plan" means the operations and maintenance plan with respect to the Improvements submitted as part of the Selected Proposal and approved by the Secretary, as the

## **Request for Proposals**

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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same may from time to time be supplemented or amended with the Secretary's approval.

"Other Tenants" means actual or prospective tenants of the Project who are not Referral Tenants, including Military Tenants who are not referred to the Project by the Robins AFB Housing Referral Service.

"Parcel" means any portion of the Property, whether or not constituting an individually subdivided lot under the applicable zoning codes or ordinances.

"Parcel Owner" means any Person who is a record owner of any portion of the Property or Project.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or any other form of entity.

"Prohibited Use" means any of the uses set forth on Exhibit B.

"Project" means a privately-owned rental housing development consisting of at least 670 housing units which exist or are to be constructed primarily for use by military personnel and their families assigned to Robins AFB, Warner Robins, Georgia and the ancillary improvements relating to such housing units as are described in and as are required to be designed, constructed, operated, maintained, replaced and rehabilitated in accordance with the Solicitation, the Selected Proposal and this Use Agreement.

"Project Documents" means the documents executed by the Borrower and/or the Secretary in connection with the Project, including this Use Agreement or other agreements.

"Project Owner" means \_\_\_\_\_, a \_\_\_\_\_, or any of its successors or assigns approved by the Secretary as the owner of the Project.

"Property" means collectively, the Land and the Improvements.

"PUDD Zoning Approval" means the planned unit development zoning approval issued by the City with respect to the Project.

"Referral Rental Rates" means the monthly rents to be charged to Referral Tenants, which Referral Rental Rates shall include the full amounts to be paid by Referral Tenants for utilities, water, sewerage, refuse collection and the operation and maintenance of the Project.

"Referral Tenants" means Military Tenants who are tenants of the Project or who are eligible to rent units in the Project and have been referred to the Project by the Robins AFB Housing Referral Service.

"Restrictive Period" means the period commencing on the Effective Date and ending on the Termination Date.

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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"Secretary" or "Air Force" means the Secretary of the Air Force, or his Authorized Representative, including any successor to the foregoing.

"Selected Proposal" means collectively the proposal submitted by or on behalf of the Project Owner and selected by the Secretary as the winning proposal in response to the Solicitation, together with the Final Plans, the final construction schedule, the Construction Management Plan, the Operations and Maintenance Plan, and the Real Estate Management Plan (as defined in the Solicitation) approved by the Government, and including any approved amendments, modifications, and/or supplements to such documents.

"Solicitation" means United States Department of the Air Force Solicitation Number F09650-98-R-0207, including any and all amendments.

"State" means the State of Georgia.

"Tenant Lease" means the residential lease required to be executed by each tenant prior to occupancy of a Housing Unit, which shall be substantially in the form attached to this Declaration as Exhibit C, unless modified or amended in accordance with this Use Agreement.

"Termination Date" means the thirtieth (30th) anniversary of the Effective Date, unless the term of this Use Agreement is extended as provided herein.

"To be Demolished Improvements" means the buildings, structures, and other improvements located on the Land which are required to be demolished by the Project Owner in accordance with the Solicitation, the Selected Proposal, the Final Plans and this Use Agreement.

"Unaccompanied Military Tenants" means unaccompanied active duty military personnel who are tenants of the Project or who are eligible to rent units in the Project.

"Use Agreement" means this Declaration of Restrictive Covenants and Use Agreement for Military Housing Project, which shall be recorded in Land Records, as the same may from time to time be supplemented or amended in the manner described herein.

### **2. Interpretation.2. Interpretation.2. Interpretation.2.**

**Interpretation.** The words "hereof," "herein," and other words of similar import refer to this Use Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. References to sections, subsections, and provisions are to the applicable sections, subsections and provisions of this Use Agreement. The headings of this Use Agreement are for convenience only and they shall not be deemed part of this Use Agreement and in no way define, limit, extend or describe the scope or intent of any provisions of this Use Agreement.

### **3. Incorporation of Solicitation and Selected Proposal.3. Incorporation of Solicitation and Selected Proposal.3. Incorporation of Solicitation and Selected Proposal.3.**

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

**Incorporation of Solicitation and Selected Proposal.** The Solicitation and Selected Proposal are incorporated in and made a part of this Use Agreement. The Project Owner shall design, construct, replace, demolish, rehabilitate, own, operate and maintain the Project in accordance with the Solicitation and Selected Proposal and the terms and conditions of the Solicitation and the Selected Proposal shall be binding upon any and all successors and assigns of the Project Owner, including without limitation, any Guaranteed Lender or other mortgagee who assumes the operation and/or ownership of the Property whether by foreclosure, deed-in-lieu of foreclosure or otherwise. In the event of a conflict between the provisions in the Solicitation, the Selected Proposal and this Use Agreement, the provisions of this Use Agreement shall control.

### **ARTICLE II. BENEFICIARIES, APPLICATION AND TERM** **ARTICLE II. BENEFICIARIES, APPLICATION AND TERM** **ARTICLE II. BENEFICIARIES, APPLICATION AND TERM**

4. **United States is Intended Beneficiary of Use Agreement**4. **United States is Intended Beneficiary of Use Agreement**4. **United States is Intended Beneficiary of Use Agreement**4. **United States is Intended Beneficiary of Use Agreement.** The Secretary and the Project Owner hereby declare their understanding and intent that the restrictions set forth in this Use Agreement burden and touch and concern the Land, are intended to enhance and increase the enjoyment and use of the Property by and on behalf of Military Tenants for the public good, and to further the public purposes for which the Land and the applicable Improvements were conveyed to the Project Owner by the Secretary; and that the United States of America, the Department of the Air Force and the Military Tenants are the intended beneficiaries of this Use Agreement and the Restrictions.

5. **Mutuality of Benefit and Obligation; Covenants to Run with the Land**5. **Mutuality of Benefit and Obligation; Covenants to Run with the Land**5. **Mutuality of Benefit and Obligation; Covenants to Run with the Land**5. **Mutuality of Benefit and Obligation; Covenants to Run with the Land**

a. The restrictions set forth in this Use Agreement are made for the mutual and reciprocal benefit of, are intended to create mutual, equitable servitudes upon, and are intended to create reciprocal rights between and impose reciprocal obligations upon the respective owners and future owners of, the entirety of and/or any portion of the Property and each and every Parcel thereof. The restrictions set forth in this Use Agreement are further intended to create a privity of contract and estate between the grantees of the entirety of and/or any portion of the Property and each and every Parcel thereof, their heirs, successors and assigns.

b. This Use Agreement and the restrictions set forth in this Use Agreement shall apply uniformly to the entire Property, be deemed covenants running with the Land, and pass to and be binding upon the Project Owner, the Project Owner's heirs, successors and assigns and all subsequent owners of the Property or any interest therein. Each and every contract, deed or other instrument executed after this Use Agreement covering or conveying the Property or any portion of or interest in the Land or the Property shall conclusively be held to have been executed, delivered and accepted subject to such restrictions, regardless of whether such restrictions are set forth in such contract, deed

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

or other instrument. All Parcels shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all the terms and conditions of this Use Agreement and every Person who is an owner of an interest in any portion of the Property does by reason of taking such title agree to all of the terms and provisions of this Use Agreement.

c. The Project Owner hereby expressly acknowledges that its interest in the Land and the Improvements may be rendered less valuable by this Use Agreement and the restrictions contained herein; that execution of and compliance with this Use Agreement is a necessary and material inducement to the Secretary's conveyance of the Land and prior conveyance of certain improvements, and the provision of the Secretary's economic contribution to the Project; and that the Secretary is relying upon the representations, warranties and covenants of the Project Owner set forth in this Use Agreement. The Project Owner further covenants and agrees that in connection with the ownership and operation of the Project, it shall require any subsequent purchaser of the entirety of and/or any portion of the Property and each and every Parcel thereof to fully comply with all terms and conditions of this Use Agreement, and further that such agreement shall be evidenced by a document executed by any such purchaser and recorded in the Land Records.

### **6. Duration and Termination.6. Duration and Termination.6. Duration and Termination.6. Duration and Termination.**

a. This Use Agreement shall remain in full force and effect from the Effective Date through and until the Termination Date; provided, however, that the term of this Use Agreement may, upon agreement by the Secretary (to be granted or denied in the sole discretion of the Secretary) and the Project Owner, be terminated prior to the Termination Date if the Secretary shall make a finding that such termination is in the best interest of the Secretary. Furthermore, upon the request of either party, the Secretary and the Project Owner shall enter into good faith negotiations in connection with the extension of the term of this Use Agreement for such additional period beyond the Termination Date as they shall agree upon.

b. It is expressly agreed and understood that the provisions of this Use Agreement shall survive the repayment in full of the Guaranteed Loan and/or the Direct Loan if such repayment occurs prior to the Termination Date.

c. This Use Agreement shall not be terminated in the event of noncompliance with the provisions of this Use Agreement, by fire or other casualty, by seizure, requisition, foreclosure or transfer by deed in lieu of foreclosure, or by condemnation or a similar event. It is expressly the intent of the parties that this Use Agreement shall be binding upon a transferee of the Property in the case of foreclosure or transfer of title by deed in lieu of foreclosure or similar event.

d. Upon the termination of this Use Agreement and upon request of any party which is subject to this Use Agreement, the Secretary and the Project Owner shall execute a recordable document evidencing such termination.

### **ARTICLE III. NATURE OF UNDERTAKING, OWNERSHIP AND USEARTICLE III. NATURE OF UNDERTAKING, OWNERSHIP AND USEARTICLE III. NATURE OF UNDERTAKING, OWNERSHIP AND USEARTICLE III. NATURE OF UNDERTAKING, OWNERSHIP AND USE**

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## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

### OWNERSHIP AND USE

7. **Private Undertaking.** The design, construction, replacement, demolition, rehabilitation, ownership, operation and maintenance of the Project is a private undertaking of the Project Owner to be accomplished at the sole cost and expense of the Project Owner and without cost, expense, loss or liability to the Government. The Project Owner shall not be entitled under this Use Agreement to receive from the Government, and other than the conveyance of the Land and certain improvements pursuant to the Contract of Sale, the Government shall not be obligated to pay or otherwise provide or contribute to the Project Owner, any monetary or other consideration for such services.

8. **Title to Improvements.** Subject to the Secretary's right to re-enter the Land in accordance with this Use Agreement, title to the Improvements during the term of this Use Agreement shall be and will remain the property of the Project Owner.

9. **Use of Property and Zoning.**

a. In the absence of prior approval of the Secretary for any other use, the sole purpose for which the Land and the Improvements may be used is for the design, construction, renovation, operation and maintenance of the Project as housing and related purposes primarily and on a preferred basis for Military Tenants in accordance with the Solicitation, the Selected Proposal and this Use Agreement and other approved uses as set forth in the PUDD Zoning Approval. No portion of the Property, including any Improvement, shall be used for a Prohibited Use.

b. This Use Agreement shall not be taken as permitting any action or thing prohibited by the PUDD Zoning Approval or the otherwise applicable zoning law, or the laws, rules or regulations of any governmental authority. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or this Use Agreement shall be taken to govern and control.

### ARTICLE IV. CONSTRUCTION, RENOVATION AND DEMOLITION

10. **Requirements for Construction and Renovation.**

a. All Improvements shall be constructed and/or renovated, and all To be Demolished Improvements shall be demolished:

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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- (1) in good and workmanlike manner;
  - (2) in accordance with the Solicitation, the Selected Proposal, the Construction Management Plan and Final Plans;
  - (3) in accordance with the construction contract between the Project Owner and its general contractor, and the construction schedule approved by the Secretary in connection with its approval of the Construction Management Plan and the Final Plans (or, with respect to the demolition of the To be Demolished Improvements, in accordance with the demolition plan approved by the Secretary);
  - (4) in accordance with all Applicable Laws, including but not limited to, the PUDD Zoning Approval granted by the City; and
  - (5) without cost, loss, expense or liability to the Secretary.

b. All drawings, specifications, and engineering calculations shall be certified by a duly qualified professional architect or engineer, as appropriate, who is licensed in the State of Georgia and is subject to approval by the Secretary.

c. All development, demolition, construction, and renovation shall be in accordance with the following local codes and standards and others as required by local, state, or federal agencies:

### Model Energy Code

American National Standard Institute (ANSI) A117.1, Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People.

Americans with Disabilities Act (ADA) Accessibility Guidelines of 1990.

### Fair Housing Act

ANSI B31.8 and B31.8b, Gas Transmission and Distribution Piping Systems.

ANSI C2, National Electrical Safety Code.

HUD 4940.2, Minimum Design Standards for Community Water Supply Systems.

HUD 4940.3, Minimum Design Standards for Community Sewage systems, National Building Code (BOCA).

National Fire Protection Association (NFPA) All Applicable Sections

National Electric Code

Occupational Safety and Health Act (OSHA).

One and Two Family Dwelling Code (CABO)

Standard Building Code (SBCC).

Standard Mechanical Code (SBCC) or (ICBO)

Standard Plumbing Code (SBCC) or (ICBO)

Standard Gas Code.

Local, State, and Federal Environmental Protection Regulations.

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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Code for the Installation of Heat Producing Appliances.

**11. Revisions to Construction Management Plan or Final Plans.11. Revisions to Construction Management Plan or Final Plans.11. Revisions to Construction Management Plan or Final Plans.11. Revisions to Construction Management Plan or Final Plans.**

a. If at any time following the approval of the Construction Management Plan or Final Plans, the Project Owner desires to make any "material change" (as defined below) to either document, the Project Owner shall request approval of the proposed materials changes from the Secretary. No proposed material change to the Construction Management Plan or the Final Plans shall be effective unless and until approved by the Secretary. Requests for approval will be made by submitting the proposed material change to the Base Civil Engineer, Robins Air Force Base. Any such proposed material change to the Construction Management Plan or Final Plans shall be prepared by a duly qualified architect or engineer, as appropriate, who is licensed to practice in the State of Georgia and shall include, if required, a revised construction schedule for completion of the Improvements, and any revised foundation, framing and structural component drawings signed and sealed by a licensed structural engineer.

b. The Secretary shall have the right to approve or reject proposed material change in the Construction Management Plan or Final Plans, in its reasonable discretion. The Secretary shall notify the Project Owner of the Secretary's approval or rejection of any proposed material change to the Construction Management Plan or Final Plans within thirty (30) calendar days from their receipt. If the Secretary rejects any proposed material change to the Construction Management Plan or Final Plans, it shall specify the reasons for rejection. Notwithstanding the provisions of this section, the Secretary shall not be liable for damages in any way related to the Secretary's approval or the failure to approve any proposed material change to the Construction Management Plan or the Final Plans.

c. For purposes of this Use Agreement, with respect to the Construction Management Plan or Final Plans, "material change" shall mean any change that affect the layout, structure, appearance, quality of materials or equipment of the Property, so that they vary from the original Selected Proposal or standard practice.

**12. Compliance with Construction Schedule.12. Compliance with Construction Schedule.12. Compliance with Construction Schedule.** The Project Owner shall diligently prosecute the construction of the Improvements to completion in accordance with the construction schedule approved by the Secretary in connection with approval of the Final Plans. It shall not be a default under this Use Agreement, if completion of the Improvements is delayed due to unavoidable delays due to strikes, acts of God, governmental restrictions, enemy action, civil commotion, fire, or similar causes or any other causes; provided that such events must be beyond the reasonable control of, and without any fault or negligence on the part of, the Project Owner and/or those engaged in the renovation and/or construction of the Improvements. The Project Owner agrees that if the Project Owner does not perform in accordance with the construction schedule approved by the Secretary as extended by the foregoing excusable delays, the failure shall constitute a default by the Project Owner under this Use Agreement.

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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**13. Bonding Requirements**13. **Bonding Requirements**13. **Bonding Requirements**13. **Bonding Requirements**13. **Bonding Requirements**. No construction shall be commenced or shall be continued with respect to the Improvements unless the Project Owner shall maintain performance, payment and any other bonds which are required to be maintained under the Construction Management Plan, the Solicitation, and the construction financing with respect to the Improvements. The bonds must be issued by a corporate surety and otherwise be in a form which is satisfactory to the Secretary (and to the construction lender, if applicable); be in the amount of the entire cost of construction of the Improvements in accordance with the Final Plans as such cost of construction is stipulated in the construction contract between the Project Owner and its general contractor; and guarantee the performance of the contract for the construction of the Improvements in accordance with the Final Plans.

**14. Construction Warranty**14. **Construction Warranty**14. **Construction Warranty**14. **Construction Warranty**14. **Construction Warranty**. The Project Owner shall warrant that the construction of the Improvements conforms to the Final Plans and is free of any defect in equipment, material, design, or workmanship. This warranty shall continue for a period of two (2) years from the date of completion of the final Improvements. Performance of the warranty shall be secured by a corporate surety or by an insurance policy in an amount not less than Two Million Dollars (\$2,000,000.00). The warranty must be issued by a company authorized to do business in Georgia and which is otherwise acceptable to the Secretary and in such form as is acceptable to the Secretary in all respects. The Project Owner shall begin work to remedy any defect in equipment, material, design or workmanship within ten (10) days after receiving written notice of the defect from the Secretary. If the Project Owner fails to remedy the defect within a reasonable time after its receipt of notice, the Secretary shall have the right to require the corporate surety or insurer to replace, repair or otherwise remedy the defect at no expense to the Secretary. The warranty shall not limit any rights of the Secretary under this Use Agreement or the other Project Documents with respect to latent defects, negligence, misconduct or fraud of the Project Owner, or any contractor or subcontractor of the Project Owner.

**15. Inspection of Property and Improvements**15. **Inspection of Property and Improvements**15. **Inspection of Property and Improvements**15. **Inspection of Property and Improvements**15. **Inspection of Property and Improvements**. **Inspection of Property and Improvements**.

a. The Project Owner agrees to permit the Secretary's representatives, agents, and employees access to and right of entry onto the Land and Improvements before, during, and after construction and renovation of the Improvements (and demolition of the To be Demolished Improvements) for purposes of monitoring, observing, making inquiries, and taking samples of materials for testing as may be necessary in order for the Secretary to evaluate the physical characteristics of the Improvements, as well as such other matters as may be deemed by the Secretary to be reasonably necessary for the Secretary to assess compliance with the Solicitation, the Selected Proposal and this Use Agreement.

b. The parties expressly understand and agree that (i) any inspection activity by the Secretary does not relieve the Project Owner of its responsibility for constructing, operating, maintaining and managing the Property pursuant to and in accordance with the terms of this Use

## Request for Proposals

Solicitation Number F09650-90-R-0207

West Robins Housing Privatization Project, UHHZ 974012

Agreement; (ii) failure of the Secretary to make any such on-site inspection or conduct such testing shall not limit or be construed to limit any of the Secretary's rights under this Use Agreement; and (iii) no action by the Secretary shall be deemed to be approval of any plans and specifications or the Improvements as to their adequacy, safety, fitness or compliance with the PUDD Zoning Approval, building permits issued in connection with the Project or other applicable law.

c. The Secretary normally will enter the Property during regular business hours and give the Project Owner at least twenty-four (24) hours prior notice of its intention to do so, unless the Secretary determines in its sole discretion that immediate entry is required for safety, environmental, operations, or security purposes. The Project Owner shall have no claim against the United States or any officer, agent, employee, or contractor thereof on account of any entries by or on behalf of the Secretary under this subsection.

### **ARTICLE V. OPERATION AND MAINTENANCE****ARTICLE V. OPERATION AND MAINTENANCE****ARTICLE V. OPERATION AND MAINTENANCE****ARTICLE V. OPERATION AND MAINTENANCE**

**16. Operation and Maintenance of the Project** 16. **Operation and Maintenance of the Project** 16. **Operation and Maintenance of the Project** 16. **Operation and Maintenance of the Project**. The Project Owner hereby represents, covenants, warrants and agrees that as of the Effective Date and throughout the term of this Use Agreement:

a. The Property has been, and shall be, acquired, constructed, equipped, owned, managed and operated for the purpose of providing residential rental property on a priority and preferred basis for Military Tenants and the Project Owner shall not permit the use of the Housing Units for any purpose except rental residences in compliance with this Use Agreement.

b. The Project Owner owns the entire Project for federal tax purposes.

c. The Project Owner shall not demolish any part of the Project necessary for the operation of the Property for its intended purposes, or perform or permit any material change to the Construction Management Plan or Final Plans or perform or permit material modification to the Project, except with the prior approval of the Secretary.

d. Neither the Project Owner nor an affiliated party of the Project Owner shall occupy any of the Housing Units in the Project; provided, however, that the Project Owner or an affiliated party of the Project Owner may occupy a residential unit in the Project, excluding any of the designated Housing Units, if the Project Owner or the affiliated party of the Project Owner is a resident manager or other necessary employee (e.g., maintenance and security personnel).

e. The Project Owner, at its sole cost and expense and without loss or liability to the Secretary, shall own, operate and maintain the Project as a rental housing development intended to benefit Military Tenants in accordance with applicable building, fire, health, environmental and other Applicable Laws, the Solicitation, the Selected Proposal, and all of the terms and conditions of this Use Agreement.

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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The above representations, covenants, warranties and agreements shall be deemed to have been made by, and shall be binding upon and shall be deemed to have been repeated by, any Person who becomes the owner of any or all of the Property, with respect to that portion of the Property acquired by such Person.

### **17. Alterations of and Additions to Improvements**

a. During the term of this Use Agreement, the Project Owner shall have the right, without the consent of the Secretary, at its expense to install such of its own machinery and equipment, to make minor improvements to, and to attach such removable fixtures in or upon, the Property as may be necessary for its use of the Property pursuant to this Use Agreement Notwithstanding the foregoing sentence, however, the Project Owner shall not make any "material modification" (as define below) to the Improvements without the prior written consent of the Secretary, which shall not be unreasonably withheld or delayed; provided, however, that prior approval of the Secretary shall not be required in the case of emergency repairs made for safety, environmental, operations, or security purposes.

b. All plans and specifications for any proposed material modification by the Project Owner require the approval of the Secretary prior to their commencement. Notwithstanding the provisions of this section, the Secretary shall not be liable for damages in any way related to the Secretary's approval or the failure to approve any proposed material modifications and/or the plans and specifications prepared in connection with such proposed material modification. For purposes of this Use Agreement, with respect to modifications, alterations, or additions to the Property, "material modification" shall mean any modification that affects the layout, structure, appearance, quality of materials or equipment of the Property, so that they vary from the original Selected Proposal or standard practice; provided, however, that maintenance and replacement in kind of the Improvements shall not constitute material modifications.

c. If any Improvements shall be altered, erected, placed or maintained upon any Parcel, otherwise than in accordance with the Final Plans or such other plans and specifications as are approved by the Secretary pursuant to the provisions of this Use Agreement, such alteration, erection, placement or maintenance shall be deemed to have been undertaken in violation of this section, and without the approval required herein, and, upon written notice from the Secretary, any such Improvement so altered in violation of this section shall be removed or realtered, and any such use shall be terminated, so as to extinguish such violation. If within fifteen (15) days after the notice of such a violation the Project Owner shall not have taken reasonable steps and be diligently proceeding toward the removal or termination of the same, the Secretary, shall have the right, through its agents and employees, to enter upon the Property and to take such steps as may be necessary to rectify such violation(s). The cost of such actions taken by the Secretary shall be a binding, obligation of the Project Owner secured by a lien against the Property and all Improvements located thereon, enforceable in accordance with the provisions of Georgia law to the fullest extent possible. In addition to any other right or remedy, the Secretary shall have the right, but not the obligation, to utilize the Security Deposit (as defined below) to cover such costs incurred by the Secretary.

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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### **ARTICLE VI. TENANTS AND LEASING REQUIREMENTS****ARTICLE VI. TENANTS AND LEASING REQUIREMENTS****ARTICLE VI. TENANTS AND LEASING REQUIREMENTS****ARTICLE VI. TENANTS AND LEASING REQUIREMENTS**

#### **18. Tenant Leases.18. Tenant Leases.18. Tenant Leases.18. Tenant Leases.**

a. Each tenant shall be required to sign a Tenant Lease prior to occupancy of a Housing Unit. Tenant Leases to be executed by Accompanied Military Tenants shall include a "Military Clause" permitting a Military Tenant to terminate the lease without liability or penalty due to military orders and shall not include a clause requiring a Military Tenant to make rent payments by allotment or other electronic transfer.

b. The Project Owner will not make material modifications to any Tenant Lease without the prior reasonable approval of the Secretary. Proposed modifications which shall be deemed to be material include specifically, but without limitation, changes to the Military Clause, changes to require security deposits from Military Tenants, changes to the pet admission policy, and changes to increase the lease term for Other Tenants. Changes (other than the foregoing) made to the form Tenant Lease which are required under applicable law or in order to conform with the then existing Georgia Board of Realtors Residential Lease shall generally be deemed to be non-material; provided that the Project Owner shall notify the Secretary prior to making any such changes and provide the Secretary with a copy of the new form Tenant Lease reflecting such proposed changes for its review and approval prior to their becoming effective.

**19. Restrictions on Tenancy.19. Restrictions on Tenancy.19. Restrictions on Tenancy.19. Restrictions on Tenancy.** The Project Owner acknowledges and agrees that Referral Tenants are the intended tenants of the Project. In furtherance of the foregoing, the Project Owner shall not rent to Military Tenants who have not been referred by the Robins AFB Housing Referral Service without prior notice to and approval from the Robins AFB Housing Referral Service to do so and shall rent to Other Tenants only in strict accord with Section 24.

#### **20. Referral Tenants20. Referral Tenants20. Referral Tenants20. Referral Tenants.**

a. So long as the Project Owner and the Project are in compliance with this Use Agreement and the other Project Documents, the Robins AFB Housing Referral shall provide Referral Tenants to the Project Owner for rental of the units in the Project in accordance with the Priority Placement Plan. The Project Owner understands and agrees that any such referral by the Government does not constitute an agreement by the Government to occupy the units in the Project, an order by the Government to such Referral Tenants to occupy the vacant units, or a guaranty of the occupancy of the units by the Government. The Secretary does not intend, and shall under no circumstances be obligated to, require military personnel and dependents stationed at Robins AFB or elsewhere to rent units at the Project. Military personnel and their dependents are free not to rent units in the Project if they choose to do so.

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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b. The Project Owner will provide written notice to the Robins AFB Housing Referral Service of all actual and projected vacancies in the units of the Project by category of the unit, which notice may be in the form of a monthly rent roll certified as true and correct by the Project Owner. The notice will be provided a minimum of thirty (30) days in advance of the availability date, whenever possible. The Project Owner will require tenants moving out to give a minimum of thirty (30) days prior notice, subject to the Military Clause. Following receipt of notice of actual or projected vacancies, the Robins AFB Housing Referral Service will advise the Project Owner on the current status of the Housing Referral List for units in the Project.

**21. Rental Mix and Option to Review Structure of Referral Rental Rates.** 21. **Rental Mix and Option to Review Structure of Referral Rental Rates.** 21. **Rental Mix and Option to Review Structure of Referral Rental Rates.** From the Effective Date and throughout the term of this Use Agreement, unless modified by an agreement executed by the Secretary and the Project Owner, the mix of Housing Units and their designation by military pay grade shall be as set forth in Exhibit D and the Applicable Percentage (as defined below in Section 22) shall be as set forth in Exhibit E. In the event there is a material change in military rank and/or pay structure for military members assigned to Robins AFB during the term of this Use Agreement, then upon the request of either party, the Secretary and the Project Owner may enter into good faith negotiations concerning possible changes in the pay grade designation of the Housing Units, the rental structure for the Project as initially set forth in this Use Agreement and the Applicable Percentage. Upon any agreement of the parties to modify the rental structure, the designation of Housing Units and/or the Applicable Percentage, this Use Agreement shall be amended by substituting a new Exhibit D and/or new Exhibit E, for the then existing Exhibit D and/or Exhibit E, as applicable.

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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22.	<b>Rental Rates for Referral Tenants.</b>	22.	<b>Rental Rates for Referral</b>
<b>Tenants.</b>	<b>Rental Rates for Referral Tenants.</b>	<b>Rental Rates for Referral</b>	<b>Tenants.</b>

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a. The Referral Tenant Rates charged to Referral Tenants shall not exceed the Housing Allowance for the grade of military personnel for which that particular unit is then designated multiplied by the percentage for each type of Housing Unit (the "Applicable Percentage") as set forth in Exhibit E. In a case where a Housing Unit is occupied by Referral Tenant having a pay grade which is higher than the pay grade for which such Housing Unit is designated, the Referral Rental Rate shall not exceed the Applicable Percentage multiplied by the Housing Allowance of the pay grade of such higher grade tenant.

b. Notwithstanding anything in this Use Agreement to the contrary, with respect to occupied Housing Units which have not yet been metered in accordance with the Solicitation and the Selected Proposal, the Project Owner shall collect as rent from Referral Tenants residing in such Housing Units an amount equal to 100% of the Housing Allowance for the grade of military personnel for which the Housing Unit is then designated or the Housing Allowance for the grade of the actual tenant, as applicable. In no event, however, shall the Project Owner ever collect as rent from a Referral Tenant with respect to a Housing Unit which is not then metered an amount which is greater than 100% of such tenant's Housing Allowance. The Project Owner shall utilize the amounts collected from the Referral Tenant to reimburse the Government for utilities; provided, that the Project Owner shall remit to the Referral Tenant any amounts which are in excess of the sum of the Referral Rental Rate which would be applicable to such Housing Unit but for the need to complete metering and the reimbursement of utilities to the Government.

c. Referral Tenant Rates shall not be adjusted more than once a year and, subject to the terms of the Tenant Lease for each Referral Tenant, such adjustment shall take effect no earlier than February 1 of each year during the term of this Use Agreement; provided, that an adjustment in Referral Tenant Rates shall in no event go into effect until the first of the month following the month in which adjustments in the Housing Allowance are made by the Government.

**23. Priority Placement Plan for Referral Tenants.23. Priority Placement Plan for Referral Tenants.23. Priority Placement Plan for Referral Tenants.**

a. The Project Owner shall use its best efforts to lease the units in the Project to Referral Tenants. The Project Owner shall offer to rent the Housing Units in the Project to Referral Tenants in the order they are referred and in accordance with the following Priority Placement Plan:

(1) If the Project Owner is unable to fill a vacant Housing Unit with a Referral Tenant who is an Accompanied Military Tenant having a pay grade which matches the designation of such vacant Housing Unit before the later of fifteen (15) days after the Housing Unit becomes vacant or forty-five (45) days after the previous tenant was provided with a notification to vacate, the Project Owner may offer such vacant Housing Unit to referred Accompanied Military Tenants having a pay grade which does not match the designation of the Housing Unit.

## Request for Proposals

Solicitation Number F09650-90-R-0207

West Robins Housing Privatization Project, UHHZ 974012

(2) If a Housing Unit is vacant for the longer of thirty (30) days after the Housing Unit becomes vacant or sixty (60) days after the previous tenant was provided with a notification to vacate, such Housing Unit can be offered to Referred Tenants who are Unaccompanied Military Tenants; provided that priority shall be given to referred Unaccompanied Military Tenants having a pay grade which matches the designation of such vacant Housing Unit.

**24. Limitations Concerning Other Tenants.**  
**24. Limitations Concerning Other Tenants.**  
**24. Limitations Concerning Other Tenants.**

a. If a vacant Housing Unit is not leased to a referred Unaccompanied Military Tenant as set forth in Section 23, such vacant Housing Unit may be rented to Other Tenants in the following priority: (i) Department of Defense and Department of the Air Force civil service employees, (ii) military retirees, and (iii) the general public.

b. Tenant Leases with Other Tenants shall not have a term in excess of one (1) year. The Project Owner acknowledges and agrees that the Secretary is agreeing to permit the occupancy of Housing Units by Other Tenants during the Restrictive Period solely as an accommodation to the Project Owner and that Referral Tenants shall re-acquire priority placement rights to Housing Units occupied by Other Tenants following the expiration of the initial one-year terms of such leases. Upon expiration of their initial one-year term, the occupancy of Other Tenants shall be converted to a month-to-month tenancy which by the terms of the Tenant Lease shall be expressly subject to termination by the Project Owner upon 30 days notice without cause or penalty. The Project Owner shall make all Housing Units occupied by Other Tenants which are month-to-month tenancies available to Referral Tenants in accordance with the priority set forth above in Section 23, and shall take all necessary action to terminate such month-to-month tenancies, if required, in order to accommodate Military Tenants who desire to rent such Housing Units.

c. The rental rates to be paid by Other Tenants shall be at rates which are no lower, or more favorable, than the Referral Rental Rates for comparable Housing Units.

**25. Tenant Information.**  
**25. Tenant Information.**  
**25. Tenant Information.**  
**25. Tenant Information.** All tenant lists, applications, and waiting lists relating to the Project, including without limitation the status of and rents charged to all tenants, shall at all times be kept separate and apart from any other business of the Project Owner, and shall be maintained, as required by the Secretary from time to time, in a reasonable condition for proper audit and subject to examination during business hours by the Robins AFB Housing Referral Service or any other duly authorized representative of the Secretary. Failure to keep such lists and applications or to promptly make them available to the Secretary will be a default under this Use Agreement. Within thirty (30) days after the end of each quarter, and at any other time upon the request of the Secretary, the Project Owner shall deliver to the Secretary a rent schedule for the Project showing the name of each tenant, and for each tenant, the Housing Unit occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by the Secretary.

## Request for Proposals

Solicitation Number F09650-90-R-0207

West Robins Housing Privatization Project, UHHZ 974012

### **ARTICLE VII. TRANSFER OF THE PROPERTY**

26. **Sale, Lease or Transfer of Property.** 26. **Sale, Lease or Transfer of Property.** 26. **Sale, Lease or Transfer of Property.**

a. The Project Owner shall not sell, assign, convey, transfer, mortgage, pledge or otherwise encumber (collectively, referred to as a "disposition") any portion of the Property during the term of this Use Agreement unless the Project Owner shall have received the prior written consent of the Secretary, which consent shall not be unreasonably withheld. It is expressly agreed that, in connection with determining whether to grant or withhold such consent, the Secretary may (but is not obligated to), among other things:

- (1) consider the creditworthiness of the party to whom such disposition will be made and its management ability with respect to the Project;
- (2) consider whether or not the security for repayment of any Guaranteed Loan and/or the Direct Loan and the performance of the obligations under the Guaranteed Loan Documents and/or Direct Loan Documents and under this Use Agreement, or the Secretary's ability to enforce its rights, remedies and recourses with respect to such security or performance, will be impaired in any way by the proposed disposition;
- (3) require that the Secretary be reimbursed for all reasonable costs and expenses incurred by the Secretary in connection with investigating the creditworthiness and management ability of the party to whom such disposition will be made and determining whether the Secretary's interests under this Use Agreement and/or the Secretary's security under the Guaranteed and/or Direct Loan will be impaired by the proposed disposition;
- (4) require the payment to the Secretary of its reasonable costs and expenses (including attorney's fees) in connection with such disposition;
- (5) require the express unconditional assumption of all payment obligations under the Guaranteed Loan and/or the Direct Loan and unconditional assumption of all performance obligations under this Use Agreement, the Guaranteed Loan Documents and/or the Direct Loan Documents by the party to whom such disposition will be made (with or without the release of the transferor Project Owner from liability for such obligations), which assumption shall be in form and substance reasonably satisfactory to the Secretary, and require the recording of such assumption document; and

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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- (6) require the execution of assignment, assumption, modification or other documents and agreements, where deemed desirable or necessary by the Secretary to document such disposition, satisfactory in form and substance to the Secretary.

b. The restrictions contained in Section 26a, and the prior consent of the Secretary, shall not be required with respect to any of the following:

- (1) any transfer pursuant to or in lieu of a foreclosure under the Guaranteed Loan or Direct Loan; provided that any such transfer to a Guaranteed Lender shall be subject to the satisfaction of the conditions set forth in the Guaranty Agreement;
- (2) grants of utility related easements and service-related leases or easements, including, without limitation, laundry service leases or television cable easements, over portions of the Project, provided that the same are granted in the ordinary course of business in connection with the operation of the Project as contemplated by this Use Agreement;
- (3) leases of units to Military Tenants and Other Tenants in accordance with the requirements of this Use Agreement; and
- (4) any sale or conveyance to a condemning governmental authority as a direct result of a condemnation or a governmental taking or a threat of such a condemnation or a governmental taking.

c. Nothing in this Section shall be deemed to modify or limit any of the provisions of the Guaranteed Loan Documents and/or Direct Loan Documents concerning the sale, transfer or conveyance of the Property or interests in the Project Owner.

### **ARTICLE VIII. APPLICABLE LAWS/ENVIRONMENTAL MATTERS** **ARTICLE VIII. APPLICABLE LAWS/ENVIRONMENTAL MATTERS** **ARTICLE VIII. APPLICABLE LAWS/ENVIRONMENTAL MATTERS** **ARTICLE VIII. APPLICABLE LAWS/ENVIRONMENTAL MATTERS**

27.	<b>Compliance with Applicable Laws.</b>	<b>Compliance with Applicable</b>
Laws.	<b>Compliance with Applicable Laws.</b>	<b>Compliance with Applicable Laws.</b>

a. The Project Owner shall at all times during the existence of this Use Agreement promptly observe and comply, at its sole cost and expense, with the provisions of all Applicable Laws, including without limitation: (i) the protection of the environment and pollution control and abatement and occupational safety and health, and (ii) construction, sanitation, licenses or permits to do business, whether the same now are in force, or that may, at any time in the future, be enacted, promulgated or issued and that are then applicable and enforceable against the Property or the Project Owner. The Project Owner shall be responsible for determining whether the Property or the activities on the

21Dec 98

K-1-24

## Appendix K-1

## Request for Proposals

Solicitation Number F09650-90-R-0207

West Robins Housing Privatization Project, UHHZ 974012

Property are subject to local building codes or building permit requirements, and for compliance with such local codes or requirements to the extent they are applicable.

b. The Project Owner's use of the Property, including construction, demolition, disposal, use, operation, maintenance, repair, and replacement of buildings and facilities shall at a minimum conform to the City of Warners Robins' residential building codes and supplemental codes, Applicable Laws and applicable provisions of the regulatory controls and requirements listed in the Solicitation and/or otherwise required under this Use Agreement.

c. The Project Owner will be responsible for obtaining, at its own expense, prior to the commencement of construction and demolition, and upon completion of the building of the Improvements, any approvals, certificates of occupancy, permits, or licenses which may be necessary to construct, occupy and operate the Improvements as a rental housing development in compliance with all Applicable Laws.

d. Responsibility for compliance as specified in this Section rests exclusively with the Project Owner. The Secretary assumes no enforcement or supervisory responsibility except with respect to matters committed to its jurisdiction and authority. The Project Owner shall be liable for all costs associated with compliance, defense of enforcement actions or suits, payment of fines, penalties, or other sanctions and remedial costs related to Project Owner's construction, ownership, use and operation of the Property.

e. The Project Owner shall have the right to contest by appropriate proceedings diligently conducted in good faith and in accordance with applicable legal requirements, without cost or expense to the Secretary, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in this Section. The Secretary shall not be required to join in or assist the Project Owner in any such proceedings.

### **28. Environmental Matters.28. Environmental Matters.28. Environmental Matters.28. Environmental Matters.**

a. The Project Owner shall at all times during the existence of this Use Agreement promptly observe and comply, at its sole cost and expense, with the provisions of all Applicable Laws with regard to environmental matters that are or may become applicable to Project Owner's activities on the Property, including without limitation, obtaining at its cost and expense any environmental permits required for its operations under this Use Agreement, independent of any existing permits.

b. The Project Owner shall indemnify, save, and hold harmless the Secretary from any claims for damages, response or other costs (including attorneys' fees), expenses, liabilities, fines, or penalties resulting in any way from releases, discharges, emissions, spills, storage, handling, disposal, or any other acts or omissions by the Project Owner, its officers, agents, employees, contractors, subcontractors or any sublessees or licensees, or the invitees of any of them, giving rise to liability on the part of the government, civil or criminal, or responsibility under Applicable Laws concerning environmental matters.

c. The Secretary's rights under this Use Agreement specifically include the right

21Dec 98

K-1-25

## **Appendix K-1**

## Request for Proposals

Solicitation Number F09650-90-R-0207

West Robins Housing Privatization Project, UHHZ 974012

for government officials to inspect the Property, upon reasonable notice as provided under this Use Agreement, for compliance with environmental, safety, and occupational health laws, rules, regulations, and standards, whether or not the Secretary is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections.

d. The Project Owner acknowledges receipt under separate cover of the Environmental Baseline Survey ("EBS") for the Property, dated \_\_\_\_\_ 199\_.

e. Any violation of the requirements of this Section shall constitute a material breach of this Use Agreement.

f. This Section, including without limitation, the Project Owner's indemnification obligation under this Section shall survive the expiration or termination of this Use Agreement, and the Project Owner's obligations under this Section shall apply whenever the Secretary incurs costs or liabilities of the types described in this Section.

### **ARTICLE IX. REQUIRED RESERVE ACCOUNTS**

The Project Owner shall be required to establish and maintain the following escrow accounts and reserves throughout the term of this Use Agreement; provided, however, that with the Secretary's prior consent and approval, the Project Owner shall not be required to maintain one or more of such accounts if the Secretary determines that accounts of comparable size and purpose are being maintained by the Project Owner under the terms of any approved financing secured by the Property subject to such terms and conditions as are reasonably acceptable to the Secretary, including that such funds are being held under an arrangement which reasonably protects the interests of the Secretary.

#### **29. Capital Repair/Replacement Escrow Account. 29. Capital Repair/Replacement Escrow Account. 29. Capital Repair/Replacement Escrow Account.**

a. The Project Owner shall establish and maintain at all times throughout the term of this Use Agreement, a replacement reserve ("Replacement Reserve") having a balance sufficient to cover major renovations and improvements expected during the term of this Use Agreement, including but not limited to, roof repair, appliance replacement, recarpeting, repaving and similar capital improvements. These funds will be held in an interest-bearing account in a Federally insured institution requiring the signature of both the Government and the Project Owner in order to withdraw funds.

b. Deposits into the Replacement Reserve in an annual amount calculated at not less than \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per year per unit (Amount Per Unit). The Amount Per Unit shall be increased by \_\_\_\_\_ per cent (\_\_\_%) per year during each year of the term of this Use Agreement. The Parties recognize that because expense disbursements from the Replacement Reserve are based on estimated useful life of the components and the estimated life of the components may vary, amounts deposited in the Replacement Reserve may or may not be adequate to

## Request for Proposals

Solicitation Number F09650-90-R-0207

West Robins Housing Privatization Project, UHHZ 974012

cover the replacement costs. Accordingly, the adequacy of the Replacement Reserve shall be analyzed annually by the Government. If the Government determines in its reasonable discretion that a higher monthly deposit is needed to ensure the future adequacy of the Replacement Reserve to accommodate maintenance of the units to industry standards, the Project Owner agrees to increase the Amount Per Unit as directed by the Government in writing. The annual amount of the funding to the Replacement Reserve may be increased or decreased without amending this Use Agreement.

c. Deposits into the Replacement Reserve shall be made monthly on the first day of each month during the term of this Use Agreement in an amount equal to one-twelfth (1/12) of the annual Amount Per Unit. With respect to newly constructed units, such monthly deposits shall begin on the first of the month following the issuance of a certificate of occupancy or its equivalent with respect to such unit or the building in which such unit is located, as applicable, without regard to whether such unit is occupied. With respect to units which are to be renovated by the Project Owner (including any units for which certificates of occupancy have not been issued), monthly deposits shall continue until the month in which each such unit is withdrawn from the rental market to undergo renovation, and shall recommence from the first day of the month following the issuance of a certificate of occupancy or its equivalent with respect to such renovated unit, without regard to whether such unit is occupied.

d. The Replacement Reserve, including all interest thereon, shall be used solely for the purpose of making capital improvements and replacements to the Project, subject to terms of this Use Agreement. Disbursements from the Replacement Reserve may be made only after receiving the written consent of the Government, which consent shall not be unreasonably withheld or delayed, or at the Government's sole and absolute discretion, the written consent of a lender that is providing financing with respect to the Project. Disbursements from the Replacement Reserve will be made no more frequently than monthly, based upon written invoices from contractors, subcontractors, suppliers, laborers, materialmen, and others supplied by Project Owner.

e. Following either a determination by the Government that an incurable default may occur or the occurrence of an uncured default by the Project Owner under this Use Agreement, or under any Guaranteed Loan, the Government may direct the use of funds in the Replacement Reserve to cure such default. Any direction by the Government for disbursement of funds in the Replacement Reserve pursuant to this section shall be in writing. If the Government directs (or approves) the disbursement of any funds in the Replacement Reserve to cure a default under such a mortgage, the Project Owner shall deposit a like amount into the Replacement Reserve as soon as possible but no later than eleven (11) months after the directed disbursement of funds.

f. The Project Owner's obligation to maintain the Project is independent of its obligation to maintain the Replacement Reserve, and the Project Owner's obligation shall not be limited or otherwise affected by the adequacy of the Replacement Reserve to cover the costs of necessary maintenance, repairs, and replacements. Subject to the terms of the LockBox Agreement (as defined below), the Project Owner may, in its discretion make additional deposits to the Replacement Reserve as it determines necessary and prudent to accommodate maintenance of the units to industry standards.

g. Upon the expiration or termination of this Use Agreement, the amounts, if any,

21Dec 98

K-1-27

## Appendix K-1

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

then deposited in the Replacement Reserve, shall first be applied to satisfy any remaining obligations or cure any defaults of the Project Owner under this Use Agreement, and the balance, if any, remaining in the Replacement Reserve following the satisfaction of such obligations of Project Owner shall be applied as follows:

(1) If this Use Agreement or the Project Owner's operation of the Project is terminated for default, any such remaining balance shall remain in the Replacement Reserve to be used in connection with the continued operation of the Property and shall become the property of the Government, or of any other party approved by the Government as the owner or operator of the Project following such termination.

(2) Upon the expiration of this Use Agreement at the end of its term, any such remaining balance shall be paid to the Project Owner.

h. Upon the sale or other transfer of the Property, the amounts, if any, then deposited in the Replacement Reserve shall be deemed to be assets of the housing project and shall be transferred to the transferee. In connection with any proposed sale or transfer of the Project, the Government shall have the right to review the amounts then deposited in the Replacement Reserve, the amount of the monthly deposits then required to be made into the Replacement Reserve, the repairs and replacements which the Government determines may be required to the Project during the remaining term of this Use Agreement and any other issues which the Government deems to be relevant with respect to the Replacement Reserve. Based upon such review, the Government may require a lump-sum deposit to the Replacement Reserve, and/or an increase in the amount of the monthly deposits into the Replacement Reserve as a condition to the Government's consent to such transfer. In all events, the transferee shall be required to assume the Project Owner's duties and obligations under this Use Agreement with respect to the Replacement Reserve.

### **30. Construction Escrow Account.30. Construction Escrow Account.30. Construction Escrow Account.30. Construction Escrow Account.**

a. Until the construction and/or renovation of all Improvements is completed in accordance with the Solicitation, the Selected Proposal, the Construction Management Plan and the Final Plans, including the issuance of certificates of occupancy with respect to all the Improvements, the Project Owner shall continue to maintain an account, separate from all other accounts maintained by the Project Owner to known as the "Construction Escrow Account." It will be a dual signature account with the Project Owner and the Government as co-signatories. The purpose of the Construction Escrow Account is to insure that the cashflow after debt service and reserves from the existing rental units is utilized to off set demolition, construction, and renovation costs.

b. Until completion of the final Improvements, all operating income of the project in excess of the normal and customary operating expenses of the project must be deposited into this account as approved by the Government. The Construction Escrow Account shall be maintained with a federally insured financial institution in an interest-bearing account. The Secretary may waive the requirement for the Construction Escrow Account if an approved lender requires a similar account.

c. Deposits into the Construction Escrow Account shall be made monthly on or  
21Dec 98 K-1-28

## Appendix K-1

## Request for Proposals

Solicitation Number F09650-90-R-0207

West Robins Housing Privatization Project, UHHZ 974012

before the 15th of each month. The Construction Escrow Account, including all interest thereon, shall be used solely for the purpose of funding the costs of the Improvements. Disbursements from the Construction Escrow Account may be made only after receiving the written consent of the Government's Authorized Representative, or at the Government's discretion, by the lender that is providing construction financing to the project in accordance with a building loan or similar agreement. Funds shall be advanced from the Construction Escrow Account in accordance with customary commercial lending practices, e.g., disbursements shall be no more frequently than once in each calendar month, based on the actual invoices of Project Owner, contractors for Project Owner, and suppliers for materials and equipment or services actually provided.

d. The Construction Escrow Account may be closed with the consent of the Government upon completion of demolition, construction, and renovation. Provided the Project Owner is not then in default under this Use Agreement, and subject to the terms of any building loan or construction loan agreement with the construction lender, upon termination of the Construction Escrow Account, excess funds in the Construction Escrow Account will be released to the Project Owner.

**31. Imposition Escrows.31. Imposition Escrows.31. Imposition Escrows.31. Imposition Escrows.** The Project Owner shall establish and maintain, throughout the term of this Use Agreement, one or more reserve accounts which are separate from all other accounts maintained by the Project Owner and known as the "Impositions Escrow Accounts" for the purpose of holding applicable tax payments and insurance premiums. The Project Owner shall deposit the estimated monthly impositions into the Impositions Escrow Account. The Impositions Escrow Account will be maintained in an interest bearing escrow account with a federally insured financial institution. The Government may request proof of deposits. This condition to maintain the Imposition Escrow Accounts may be satisfied by an approved escrow account with an approved lender. As and when reasonably requested by the Government, proof shall be provided to the Government to verify the existence and balance of any such accounts maintained by an approved lender.

**32. Security Deposit Account.32. Security Deposit Account.32. Security Deposit Account.32. Security Deposit Account.**

a. Throughout the term of this Use Agreement, the Project Owner shall establish and maintain, an interest-bearing account (the "Security Deposit Account") with a federally insured financial institution or with a commercial investment firm reasonably acceptable to the Secretary which is separate from all other accounts maintained by the Project Owner. The Project Owner shall maintain in the Security Deposit Account throughout the Restrictive Period a minimum of \$250,000 (the "Security Deposit"), in the form of cash or certified funds. The Security Deposit shall serve as security for the payment and performance by the Project Owner of all obligations, covenants, conditions and agreements under this Use Agreement, excluding demolition, construction, and renovation, and subject to the following terms and conditions:

b. The Security Deposit Account shall be established with the designated representative of the Secretary having sole disbursement of funds authority via check writing privileges.

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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c. If the Project Owner fails to perform any provision of the Solicitation, the Selected Proposal, this Use Agreement or the other Project Documents, after any applicable notice and cure period, the Secretary may, after seven (7) days written notice to the Project Owner and without prejudice to any other remedy it may have, make a unilateral deduction from the Security Deposit Account and apply any or all of the Security Deposit to correct such non-compliance. If the amounts in the Security Deposit Account are not sufficient to cover such amount, the Project Owner shall pay the difference to the Secretary on demand.

d. If the Secretary uses or applies all or any portion of the Security Deposit in accordance with the terms of this Use Agreement, the Project Owner shall, within the time specified by the Secretary, deposit an amount sufficient to restore the Security Deposit Account to the greater of \$250,000 or the balance of the account on the date the money was removed.

e. If the Project Owner shall fail to deposit or cause to be deposited any of the Security Deposit within thirty (30) days following receipt of the Secretary's demand for such amounts, the Secretary shall give written notice that the Project Owner is delinquent in his payment and such unpaid amounts will bear interest at the rate of ten percent (10%) per annum. In the event the Project Owner shall fail to pay any such amounts within such thirty (30) day period, in addition to the right to sue the Project Owner for a judgment, the Secretary shall have the right to enforce the lien imposed under this Use Agreement to the same extent, and subject to the same procedure, as in the case of mortgages under applicable Georgia law. The amount due by the Project Owner shall include the amount of all amounts past due, as well as the costs of such proceedings, including reasonable attorney's fees, and the aforesaid interest. In addition, to the extent permitted by law, the Secretary shall have the right to foreclose on and sell all or a portion of the Property owned by the Project Owner at public or private sale after giving notice to the Project Owner in the manner required under Georgia law for the conduct of non-judicial foreclosures. The Project Owner shall be charged with and the Project shall be subject to a lien for any amounts not paid by the Owner in accordance with this Section.

f. If ownership of the Project is transferred to more than one party in accordance with this Use Agreement, each party, by acceptance of a deed or other conveyance of any Parcel, whether or not it shall be so expressed in any such deed or other conveyance, and so long as such Person is the record owner of any such Parcel, shall be deemed to covenant and agree to pay its pro-rata share of the Security Deposit. A Parcel owner's pro-rata share of the Security Deposit shall be determined as follows: (i) the number of units owned by a Person multiplied by (ii) number of units in the Project divided by (iii) the Security Deposit. Each such pro-rata payment, together with interest and costs of collection, including reasonable attorney's fees, shall be the obligation of the Person owning the Parcel at the time of the demand for payment of the Security Deposit as well as the obligation of any Person purchasing the Parcel subject to such amounts due and interest and costs of collection, if any.

g. If the Project Owner performs all of its obligations under this Use Agreement, and is not then in default under this Use Agreement, the Security Deposit Account, or so much of the Security Deposit Account as has not been applied by the Secretary, shall be returned to the Project Owner within sixty (60) days after the expiration or termination of this Use Agreement.

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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33.	<b>Reinvestment Account.</b>	33.	<b>Reinvestment Account.</b>	33.	<b>Reinvestment</b>
<b>Account.</b>	<b>Reinvestment Account.</b>				

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a. The Project Owner has agreed to designate \_\_\_\_\_ percent (\_\_\_%) of the Project's "net cashflow" (as defined below) into a "Reinvestment Account". The purpose of the Reinvestment Account is to protect and/or enhance the Project for use by Military Families, the intended beneficiaries of the Project and this Use Agreement, through reinvestment in the Project in the form of quality of life improvements that will directly benefit Military Tenants. For purposes of this Use Agreement, "net cashflow" shall mean gross income of the Project minus operating expenses, required debt service, all required escrows (other than the Reinvestment Account), taxes, and preferred returns. The Reinvestment Account shall be utilized in accordance with the "Reinvestment Plan" approved by the Government as part of the Selected Proposal and/or for other purposes which are consistent with the purpose of the Reinvestment Account as approved by the Government.

b. The Project Owner shall establish and maintain the Reinvestment Account as an interest-bearing account with a federally insured financial institution or with a commercial investment firm reasonably acceptable to the Secretary which is separate from all other accounts maintained by the Project Owner. The Project Owner shall keep or cause its books and records to be kept in such a manner as to easily and accurately identify annual net cashflow of the Project. The Secretary, during normal business hours, shall have the right to enter and have free access to inspect all books and records of the Project Owner with respect to net cashflow.

34. **Tenant Security Deposit Account.**34. **Tenant Security Deposit Account.**34. **Tenant Security Deposit Account.**34. **Tenant Security Deposit Account.** The purpose of the account is to maintain tenant's security deposits separate from all other funds. The Project Owner shall establish and maintain the Tenant Security Deposit Account throughout the term of this Use Agreement in accordance with applicable federal and Georgia laws.

35. **Lockbox Account.**35. **Lockbox Account.**35. **Lockbox Account.**35. **Lockbox Account.** Throughout the term of this Use Agreement, the Project and the Project Owner shall be subject to a Lockbox Agreement which must be satisfactory in all material respects to the Government and to which, at its option, the Government may or may not choose to be a party. The Lockbox Agreement must, among other things, require that all income from the Project be deposited into a "Lockbox Account" held by a depository institution acceptable to the Government in an account separate from all other accounts established by the Project Owner, and govern the priority of application of Project income for items such as normal and reasonable operating expenses, debt service, reserve accounts, and required impounds under construction financing, the Guaranteed Loan and the Direct Government Loan, and the terms and conditions under which the balance remaining after the payment of such items shall be transferred to the Project's operating account.

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<b>ARTICLE X. INSURANCE REQUIREMENTS</b>	<b>ARTICLE X. INSURANCE REQUIREMENTS</b>	<b>ARTICLE X. INSURANCE REQUIREMENTS</b>	<b>ARTICLE X. INSURANCE REQUIREMENTS</b>
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36. **Risk of Loss.** 36. **Risk of Loss.** 36. **Risk of Loss.** 36. **Risk of Loss.**

## Request for Proposals

Solicitation Number F09650-90-R-0207

West Robins Housing Privatization Project, UHHZ 974012

The Project Owner shall, in all circumstances and events and without prejudice to any other rights of the Secretary, bear all risk of loss or damage or destruction to the Property, including any building(s), improvements, fixtures or other property thereon, arising from any causes whatsoever, with or without fault by the Secretary.

### **37. Types of Insurance Coverage.37. Types of Insurance Coverage.37. Types of Insurance Coverage.37. Types of Insurance Coverage.**

a. During the entire period this Use Agreement shall be in effect, the Project Owner, at no expense to the Secretary, shall carry and maintain:

(1) Property insurance coverage against loss or damage by fire and lightning and against loss or damage or other risks embraced by coverage of the type now known as the broad form of extended coverage (including but not limited to riot and civil commotion, vandalism, and malicious mischief and earthquake, if available at commercially reasonable rates) in an amount not less than 100% of the full replacement value of the buildings, building improvements, improvements to the land, and personal property on the Property. Such amount shall be determined from time to time by the Secretary, or upon the written request of the Project Owner, but not more frequently than once in any twenty-four (24) consecutive calendar month period (except in the event of substantial changes or alterations to the Property undertaken by the Project Owner as permitted under the provisions of this Use Agreement). The policies of insurance carried in accordance with this Section shall contain a "Replacement Cost Endorsement."

(2) Comprehensive general liability insurance on an "occurrence basis" (provided such coverage is available at commercially reasonable rates) against claims for "personal injury," including without limitation, bodily injury, death or property damage, occurring upon, in or about the Property including any buildings thereon and adjoining sidewalks, streets, and passageways, such insurance to afford immediate minimum protection at the execution of the Declaration, and at all times during the term of this Use Agreement, with limits of liability in amounts approved from time to time by the Secretary, but not less than TEN MILLION DOLLARS (\$10,000,000) in the event of bodily injury and death to any one or more persons in one accident, and not less than THREE MILLION DOLLARS (\$3,000,000) for property damage. Such insurance shall also include coverage against liability for bodily injury or property damage arising out of the acts or omissions by or on behalf of any person or organization, or involving any owned, non-owned, leased or hired automotive equipment in connection with the Project Owner's activities. The insurance carried and maintained by the Project Owner pursuant to this Section shall provide coverage to protect the Secretary from any damage and liability for which the Project Owner is liable or responsible or agrees to hold harmless and indemnify the Secretary under this Use Agreement. Proceeds under all policies of insurance carried and maintained to provide the coverage required by this Use Agreement shall be available only for that purpose.

b. During the entire period this Use Agreement shall be in effect, the Project Owner shall either carry and maintain the insurance required below at its expense or require any contractor performing work on the Property to carry and maintain such insurance at no expense to the Secretary:

## Request for Proposals

Solicitation Number F09650-90-R-0207

West Robins Housing Privatization Project, UHHZ 974012

(1) The broad form of extended coverage insurance provided for in this Section above shall be maintained for the limits specified therein and shall provide coverage for the mutual benefit of the Secretary and the Project Owner as additional insureds in connection with any construction, renovation or other work permitted pursuant to this Use Agreement.

(2) Fire and any other applicable insurance provided for in this Article which, if not then covered under the provisions of existing policies, shall be covered by special endorsement thereto in respect to any improvements, structures, alterations, or additions to or installations, including all materials and equipment therefor, incorporated in, on or about the Property (including excavations, foundations, and footings) under a broad form all risks builder's risk completed value form or equivalent thereof.

(3) Workers' compensation or similar insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against the Secretary, the Project Owner or the Property, in form and amounts required by law.

### **38. Evidence of Insurance Coverage.38. Evidence of Insurance Coverage.38. Evidence of Insurance Coverage.38. Evidence of Insurance Coverage.**

a. All policies of insurance which this Use Agreement requires the Project Owner to carry and maintain or cause to be carried or maintained pursuant to this Section shall be evidenced by valid and enforceable policies, in such forms and amounts as may, from time to time, be required under this Use Agreement, which are issued by insurers reasonably acceptable to the Secretary. All policies issued by the respective insurers for comprehensive general liability insurance and for the broad form of extended coverage insurance provided for above in this Section shall be for the mutual benefit of the Secretary and the Project Owner and will name the Secretary as an additional insured. Each such policy shall (i) provide that any losses shall be payable notwithstanding any act or failure to act or negligence on the part of the Project Owner or the Secretary or any other person; (ii) provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least sixty (60) days after receipt by the Secretary of written notice thereof by the insurer; (iii) provide that the insurer shall have no right of subrogation against the Secretary; and (iv) be reasonably satisfactory to the Secretary in all other respects. In no circumstances will the Project Owner be entitled to assign to any third party rights of action which the Project Owner may have against the Secretary. Notwithstanding the foregoing, any cancellation of insurance coverage based on nonpayment of the premium shall be effective upon ten (10) days' prior written notice to the Secretary. The Project Owner understands and agrees that except upon the prior consent of the Secretary, cancellation or, reduction in coverage of, or other material change in any insurance coverage required to be carried and maintained by the Project Owner under this Section will constitute a default under this Use Agreement.

b. The Project Owner shall deliver or cause to be delivered upon execution of this Use Agreement (and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Section), at the Secretary's option, either a certified copy of each policy of insurance required by this Use Agreement as soon as each such policy is made available by the insurer, or a certificate of insurance evidencing the insurance required by this Use Agreement, or both.

21Dec 98

K-1-33

## Appendix K-1

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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### 39. Notice of Insurable Events.39. Notice of Insurable Events.39. Notice of Insurable Events.39. Notice of Insurable Events.

a. If any item or part of the Property, shall be damaged (except *de minimis* damage) or destroyed, the Project Owner shall promptly give notice thereof to the Secretary. The Project Owner shall, as soon as practicable after the casualty, restore the Property as nearly as possible to the condition which existed immediately prior to such loss or damage without regard to the sufficiency of any insurance proceeds.

b. If the Secretary determines the magnitude of damage or destruction to the Property is so extensive as to render the Property incapable of use by the Project Owner for its operations as contemplated by the Solicitation, the Selected Proposal and this Use Agreement, and the repairs, rebuilding, or replacement of the damaged or destroyed property cannot reasonably be expected to be substantially completed within the time period set forth in the Guaranteed Loan Documents, or in the Direct Loan Documents, if the Guaranteed Loan has been paid in full, or within nine (9) months if both the Guaranteed Loan and the Direct Loan have been paid in full, the Secretary may, at its sole option, permit the termination of this Use Agreement.

### ARTICLE XI. LIENS AND MORTGAGESARTICLE XI. LIENS AND MORTGAGESARTICLE XI. LIENS AND MORTGAGESARTICLE XI. LIENS AND MORTGAGES

#### 40. Permitted Liens and Mortgages.40. Permitted Liens and Mortgages.40. Permitted Liens and Mortgages.

**Permitted Liens and Mortgages.** The Project Owner shall be permitted to engage in any financing or other transaction creating any mortgage upon the Property, to place or suffer to be placed upon the Property any lien or other encumbrance, or to suffer any levy or attachment to be made on the Project Owner's interest in the Property, so long as such mortgage or other encumbrance shall not extend to or affect the reversionary interest or the estate of the Government in the Property. Any inconsistent mortgage, encumbrance, or lien shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced, and is void in its inception.

#### 41. No Cross-Default or Cross-Collateralization With Opportunity Site Parcels.41.

**No Cross-Default or Cross-Collateralization With Opportunity Site Parcels.**41. **No Cross-Default or Cross-Collateralization With Opportunity Site Parcels.** Notwithstanding the provisions of Section 40, the Project Owner shall not pledge, mortgage, assign, encumber or otherwise grant a security interest in the Property or the rents, issues, profits or other income of the Property, for the benefit of, to secure repayment of, or otherwise in connection with, any loan or indebtedness related to or secured by any property other than the Property, including specifically, but without limitation, the Opportunity Site Parcels (as defined in the Contract of Sale).

#### 42. Estoppel Certificate.42. Estoppel Certificate.42. Estoppel Certificate.42. Estoppel Certificate.

The Government agrees to execute an Estoppel Certificate and

## Request for Proposals

Solicitation Number F09650-90-R-0207

West Robins Housing Privatization Project, UHHZ 974012

any other similar documentation as may reasonably be required by the mortgagee to certify as to the status of this Use Agreement and to the performance of the Project Owner hereunder as of the date of such certification.

**43. Notice of Mortgage or Encumbrance.** Promptly after encumbering the Property, the Project Owner shall furnish the Government a written notice setting forth the name and address of such mortgagee. Further, the Project Owner shall notify the Government promptly of any lien or encumbrance which has been created or attached to the Property or to the Project Owner's interest in the Property, whether by act of the Project Owner or otherwise, of which the Project Owner itself has notice.

**44. Foreclosure Purchaser.** If a mortgagee or purchaser at foreclosure of the mortgage shall acquire the Project Owner's interest in the Property, by virtue of the default by the Project Owner under the mortgage or otherwise, this Use Agreement shall continue in full force and effect so long as the mortgagee or purchaser at foreclosure is not in default under this Use Agreement. Notwithstanding any foreclosure, the Project Owner shall remain liable for the performance of all the terms, covenants, and conditions of this Use Agreement which by the terms hereof are to be carried out and performed by the Project Owner. The mortgagee or purchaser at foreclosure may not appoint an agent or nominee to operate and manage any portion of the Property on its behalf without obtaining the prior written approval of the Government. Such approval shall not be withheld or delayed so long as the proposed agent or nominee has demonstrated experience or expertise in the Project, management, and operation of rental housing development facilities similar to the Property, as determined by the Government. For the period of time during which the mortgagee or any purchaser at foreclosure of a mortgage holds the Project Owner's interest in the Property, the mortgagee or such purchaser shall become liable and fully bound by the provisions of this Use Agreement.

**45. Notice and Opportunity to Cure.** With respect to any mortgagees of which the Government has been provided notice in accordance with this Article XI, the Government agrees that the following shall apply:

a. If requested by a mortgagee which shall have duly registered in writing with the Government its name and address, any notice with respect to a default or a termination of this Use Agreement from the Government to the Project Owner shall be delivered simultaneously to such mortgagee at its registered address, and in the event of any such registration, no notice of default or termination of this Use Agreement given by the Government to the Project Owner shall be deemed legally effective until and unless like notice shall have been given by the Government to such mortgagee.

b. Such mortgagee entitled to such notice shall have any and all rights of the Project Owner with respect to the curing of any default hereunder by the Project Owner.

c. The Government will not accept any cancellation by the Project Owner or enter

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

into any material modification of this Use Agreement without the prior written consent thereto of each mortgagee who shall become entitled to notice as provided in this Article XI. The foregoing shall not apply or be construed to apply to any right the Government may have to terminate this Use Agreement pursuant to its terms. It is also agreed that the Project Owner shall provide any such mortgagee with notice of any proposed modification.

d. It is agreed that in the event that this Use Agreement is terminated for any default of the Project Owner which cannot be cured by the payment of money or performance of maintenance, repair, or construction work, such default (a "personal default") shall not be required to be cured by the mortgagee, and such personal default shall be waived by the Government as to such mortgagee.

**46. Mortgagee's Right to Postpone Termination.** 46. **Mortgagee's Right to Postpone Termination.** 46. **Mortgagee's Right to Postpone Termination.** If the Government shall elect to terminate this Use Agreement by reason of any default described herein with respect to this Use Agreement, each mortgagee that shall have become entitled to notice as provided in this Article XI shall not only have any and all rights of the Project Owner with respect to curing of any default, but also shall have the right to postpone and extend the specified date for the termination of this Use Agreement or the reversion of title to the Land in the Secretary ("Mortgagee's Right to Postpone") in any notice of termination by the Government to the Project Owner ("Termination Notice"), subject to the following conditions:

a. Such mortgagee shall give the Government written notice of the exercise of the Mortgagee's Right to Postpone prior to the date of termination specified by the Government in the Termination Notice and simultaneously pay to the Government all amounts required to cure all defaults then existing (as of date of the exercise of Mortgagee's Right to Postpone) which may be cured by the payment of a sum of money.

b. Such mortgagee shall pay any sums and charges which may be due and owing by the Project Owner and promptly undertake to cure, diligently prosecute and, as soon as reasonably possible, complete the curing all defaults of the Project Owner which is susceptible of being cured by such mortgagee.

c. The Mortgagee's Right to Postpone shall extend the date for the termination of this Use Agreement specified in the Termination Notice for a period of not more than six (6) months.

d. If, before the date specified for the termination of this Use Agreement as extended by such mortgagee's exercise of Mortgagee's Right to Postpone, the assumption of performance and observance of the covenants and conditions herein contained on the Project Owner's part to be performed under this Use Agreement shall be delivered to the Government by the mortgagee, or its nominee and the mortgagee shall have complied with all obligations on the Project Owner's part to be performed under this Use Agreement and no further defaults shall have occurred which shall not have been cured within the periods of time after notice above provided for; then and in such event, all defaults under this Use Agreement shall be deemed to have been cured, and the Government's Termination Notice shall be deemed to have been withdrawn.

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

47. **Delivery of Physical Possession of Property.**47. **Delivery of Physical Possession of Property.**47. **Delivery of Physical Possession of Property.** Nothing herein contained shall be deemed to impose any obligation on the part of the Government to deliver physical possession of the Property to such holder of a mortgage.

48. **Multiple Approved Mortgagees.**48. **Multiple Approved Mortgagees.**48. **Multiple Approved Mortgagees.** If more than one mortgagee shall seek to exercise any of the rights provided for in this Article XI, the holder of the mortgage having priority of lien over the other mortgagees shall be entitled, as against the others, to exercise such rights. Should a dispute arise among mortgagees regarding the priority of lien, the mortgagees must prove to the satisfaction of the Government that they have settled that dispute.

### **ARTICLE XII. SECRETARY'S RIGHTS AND REMEDIES UPON DEFAULT****ARTICLE XII. SECRETARY'S RIGHTS AND REMEDIES UPON DEFAULT****ARTICLE XII. SECRETARY'S RIGHTS AND REMEDIES UPON DEFAULT****ARTICLE XII. SECRETARY'S RIGHTS AND REMEDIES UPON DEFAULT**

49. **Defaults.**49. **Defaults.**49. **Defaults.**49. **Defaults.**

a. The following shall constitute defaults under this Use Agreement by the Project Owner:

(1) The Project Owner's failure to construct, renovate, operate, manage or maintain the Improvements in accordance with the Solicitation, the Selected Proposal and this Use Agreement.

(2) The Project Owner's failure to maintain the Security Deposit Account and other required escrow and reserve accounts in accordance with the Solicitation, the Selected Proposal and this Use Agreement.

(3) The Project Owner's failure in the performance of any of its obligations under the Solicitation, the Selected Proposal or this Use Agreement, including specifically, but without limitation, the Project Owner's failure to comply with the restrictions on transfer of the Property set forth in Section 26 of this Use Agreement, and such failure remains uncured following expiration of any applicable notice and cure period. If no cure period is otherwise provided, the Project Owner shall have thirty (30) days after delivery of written notice of default by the Secretary to the Project Owner. If, however, in the reasonable opinion of the Secretary, the time required to return to compliance exceeds the thirty (30) day period, the Project Owner shall not be deemed to be in default if within such 30-day period the Project Owner shall begin the actions necessary to bring it into compliance with the applicable documents in accordance with a compliance schedule agreed to by the Secretary and continues to diligently pursue such actions.

(4) The Project Owner breach of any representation or warranty of the

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

Project Owner contained in the Selected Proposal or this Use Agreement, and the Secretary shall determined that such breach has had or will have a material adverse impact on the Secretary, the Project or the Military Tenants.

b. The Project Owner may not waive, modify, lessen or otherwise affect its liability for any of its obligations under this Use Agreement by non-use or abandonment of the Project.

**50. Effect of Defaults by Project Owner on Mortgages.50. Effect of Defaults by Project Owner on Mortgages.50. Effect of Defaults by Project Owner on Mortgages.50. Effect of Defaults by Project Owner on Mortgages.**

a. No violation of any of the provisions of this Use Agreement shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagee's or foreclosure sale shall be bound by and subject to this Use Agreement as fully as any other owner of any portion of the Property.

b. The occurrence of a default under this Use Agreement shall not be deemed, under any circumstances whatsoever, to be a default under the Guaranteed and/or Direct Loan Documents except as specified in the Guaranteed and/or Direct Loan Documents.

**51. Remedies.51. Remedies.51. Remedies.51. Remedies.**

a. The Project Owner acknowledges that the primary purpose for requiring compliance by the Project Owner with this Use Agreement is to assure compliance of the Project and the Project Owner with the Solicitation and the Selected Proposal. Project Owner hereby further specifically acknowledges that the United States of America, the Department of the Air Force and Military Tenants as the beneficiaries of the Project Owner's obligations under this Use Agreement cannot be adequately compensated by monetary damages in the event of any default under this Use Agreement.

b. THE PROJECT OWNER, IN CONSIDERATION FOR THE AGREEMENTS OF THE SECRETARY IN CONNECTION WITH THE PROJECT, HEREBY AGREES THAT THE SECRETARY SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE PROJECT OWNER OF ITS OBLIGATIONS UNDER THIS USE AGREEMENT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION.

c. If, in the reasonable opinion of the Secretary, the Project Owner fails to properly maintain and preserve the Project, the Property or the Improvements, the Secretary after providing the Project Owner with thirty (30) days prior written notice to remedy the condition in question to the reasonable satisfaction of the Secretary, shall have the right, through its agents and employees, and a non-exclusive easement, to enter upon the Property in question and repair, maintain, repaint and restore any or all or the Project or Property, such improvements or such landscaping

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

thereon, in such a manner as the Secretary shall deem sufficient, including by application of the Security Deposit. The Project Owner shall reimburse the Secretary for the cost of such repairs by the Secretary and the obligation to so reimburse the Secretary shall be a binding, personal obligation of the Project Owner secured by a lien against the Property and all improvements located thereon, enforceable in accordance with the applicable provisions of Georgia law to the fullest extent possible.

d. If the Project Owner fails to perform its obligations under this Use Agreement, or otherwise commits a default, which is not cured within the applicable cure period specified, if any, the Secretary may use, apply, or retain all or any portion of the Security Deposit Account for the payment of any sum to which the Secretary may become entitled by reason of the Project Owner's default, or to compensate the Secretary for any loss or damage which the Secretary may suffer as a result of such default without any deductions, offset or recoupment whatsoever.

e. In the event of a violation or breach of any of the provisions of this Use Agreement by the Project Owner, the Secretary shall also have the right to proceed at law or in equity to compel compliance with its terms and conditions, to prevent the violation or breach of this Use Agreement, to sue for and recover damages or other amounts due, or take all such courses of action at the same time, or such other legal remedy the Secretary may deem appropriate.

f. In addition to the Secretary, the Military Tenants shall also have the right to exercise the remedies provided under this Use Agreement or otherwise at law or in equity to compel compliance by the Project Owner with its terms and conditions, to prevent the violation or breach of this Use Agreement, to sue for and recover damages or other amounts due, or take all such courses of action at the same time, or such other legal remedy, such Military Tenants may deem appropriate.

### **52. Reversion of Title to Secretary Following Defaults.52. Reversion of Title to Secretary Following Defaults.52. Reversion of Title to Secretary Following Defaults.**

a. In addition to any other rights or remedies, in the event of an uncured default by the Project under this Use Agreement, the Secretary shall also have the right in its sole discretion to re-enter and take possession of any or all of the Land and to terminate (and revert in the Secretary) the estate conveyed by the Secretary to the Project Owner.

b. IT IS THE INTENT OF THE PARTIES THAT THE CONVEYANCE OF THE LAND TO THE PROJECT OWNER SHALL BE MADE UPON A CONDITION SUBSEQUENT TO THE EFFECT THAT IN THE EVENT OF ANY DEFAULT, FAILURE, VIOLATION, OR OTHER ACTION OR INACTION BY THE PROJECT OWNER AS SPECIFIED IN THIS USE AGREEMENT, WHICH IS NOT REMEDIED BY THE PROJECT OWNER (OR ANOTHER PARTY ON BEHALF OF THE PROJECT OWNER) TO THE SATISFACTION OF THE SECRETARY WITHIN THE PERIOD AND IN THE MANNER STATED IN THIS USE AGREEMENT, THE SECRETARY AT ITS OPTION MAY DECLARE A TERMINATION IN FAVOR OF THE SECRETARY OF THE TITLE, AND OF ALL THE RIGHTS AND INTERESTS IN AND TO THE LAND CONVEYED BY THE SECRETARY TO THE PROJECT OWNER AND THAT SUCH TITLE AND ALL RIGHTS AND INTERESTS OF

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

THE PROJECT OWNER, AND ANY ASSIGNS OR SUCCESSORS IN INTEREST TO AND IN THE LAND, SHALL REVERT TO THE SECRETARY.

c. Any reversion of title to the Land in the Secretary pursuant to the provisions of this Use Agreement shall:

(1) not defeat, render invalid, or limit in any way (i) the lien of any mortgage approved in writing by the Secretary prior to the date of such reversion of title in the Secretary, or (ii) any rights, remedies or interests provided under the mortgage documents for the protection of the holders of such mortgages; and

(2) include title to any and all Improvements which exist or have been constructed and/or are in the process of being constructed on the Land as of the date of such reversion.

d. Within fifteen (15) days of written notice from the Secretary of such reversion of title, the Project Owner shall provide the Secretary with a deed to the Land (in a form reasonably satisfactory to the Secretary) and the Improvements or such portion of the Land and Improvements which has reverted in the Secretary and any and all improvements located on the Land and shall execute and deliver all documents (in a form reasonably satisfactory to the Secretary), provide all information and take or forbear from taking such action as may be reasonably necessary or appropriate to achieve the reversion of title. The Project Owner hereby irrevocably appoints the Secretary as the Project Owner's attorney-in-fact to execute and record on its behalf such deed and to execute such other documents and instruments on behalf of the Project Owner as the Secretary, in its sole judgment, shall deem necessary or desirable for the purposes of effectuating the reversion of title and such power shall be coupled with an interest and irrevocable until the expiration or other termination of this Use Agreement; provided that such power shall be exercisable only if the Project Owner fails to deliver the required deed and other documents within 15 days of written notice from the Secretary.

**53. Retention of or Resale of Reacquired Land and Improvements; Disposition of Proceeds.**  
**53. Retention of or Resale of Reacquired Land and Improvements; Disposition of Proceeds.**  
**53. Retention of or Resale of Reacquired Land and Improvements; Disposition of Proceeds.**  
**53. Retention of or Resale of Reacquired Land and Improvements; Disposition of Proceeds.**

a. Upon the reversion or vesting of title to any or all of the Land and Improvements to the Secretary, the Secretary, in its sole discretion and at its sole option, shall have the right to retain title and ownership of any Land and Improvements so reacquired or acquired, or shall have the right, but not the obligation, to use good faith efforts to resell or lease any or all of the Land and the Improvements in such manner as the Secretary shall deem appropriate; provided, however, if any Land and any Improvements in which title has reverted or vested in the Secretary are subject to a mortgage, deed of trust or other security instrument which has been approved by the Secretary, including securing the Guaranteed Loan, and the Secretary makes a decision to sell or lease the Land and Improvements, selection of the purchaser, lessee or other transferee shall be subject to the consent of the holder of such approved security instrument, including without limitation, the Guaranteed

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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Lender, which consent shall not be unreasonably withheld.

b. Upon any such resale or lease of the Land and Improvements, the proceeds of such shall be applied in the following order of priority:

(1) To reimburse the Secretary on its own behalf for all costs and expenses incurred by the Secretary, in connection with the revesting or vesting of title, management, resale or leasing of the Land and the Improvements;

(2) any other amounts owing the Secretary by the Project Owner, its successors or transferees, under this Use Agreement;

(3) all taxes, assessments, and water and sewer charges with respect to the Land and the Improvements;

(4) any payments made or necessary to be made to discharge any encumbrances or liens existing on the Land and Improvements at the time of revesting or vesting of title in the Secretary other than the lien of loans approved by the Secretary;

(5) amounts due under the Guaranteed Loan, the Direct Loan and any mortgage on the Property approved by the Secretary, in their priority, or in accordance with any intercreditor or other agreement between the holders of such loans;

(6) any expenditures made (or to be made) or obligations incurred (or to be incurred) with respect to the making or completion of the Improvements; and

(7) the balance remaining, if any, to the Project Owner.

### 54. Indemnification.54. Indemnification.54. Indemnification.54. Indemnification.

a. The Project Owner shall indemnify and hold harmless the Secretary and Military Tenants, their past, present and future officials, employees, attorneys and agents (any or all of the foregoing being referred to as the "Indemnified Persons") from and against (i) any and all costs, counsel fees, expenses or liabilities arising from any act or omission of the Project Owner or any of its agents, contractors, servants, employees, attorneys, invitees or licensees in connection with the Project; and (ii) any and all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought on such claim. If any action or proceeding is brought against any Indemnified Person with respect to which indemnity may be sought under this Use Agreement, the Project Owner, upon written notice from the Indemnified Person, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The Indemnified Person shall have the right to participate in the investigation and defense of any such claim and may employ separate counsel with the approval and consent of the Project Owner, which consent shall not be unreasonably withheld, or without the need for approval and consent by the Project Owner if the Indemnified Person reasonably determines that a conflict of interest exists between such Indemnified Person and the Project Owner in connection with such claim. In either such event the Project Owner shall pay the reasonable

21Dec 98

K-1-41

## Appendix K-1

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

fees and expenses of such separate counsel.

b. During any period that a Guaranteed Lender (or its designee acting on behalf of a Guaranteed Lender) assumes control over the operation of, or owns the Property, the Guaranteed Lender's obligations (or the obligations of its designee acting on behalf of a Guaranteed Lender) under this Section shall be limited to acts and omissions of a Guaranteed Lender (or its designee acting on behalf of a Guaranteed Lender) occurring during the period of the Guaranteed Lender's ownership of the Property (or the ownership of the Property by its designee acting on behalf of a Guaranteed Lender).

55. **Lien for Sums Due.**55. **Lien for Sums Due.**55. **Lien for Sums Due.**55. **Lien for Sums Due.**

a. All property of the Project Owner shall be subject to a continuing lien for any sums due from the Project Owner in accordance with the provisions of this Use Agreement. Such sums, together with interest on such sums at the rate of 10% per annum, and the costs of collecting the same (including reasonable attorney's fees) as provided in this Use Agreement, shall be a charge against and a continuing lien upon the Property.

b. Any lien or charge authorized in this Use Agreement with respect to the Property, or any Parcel, is hereby made subordinate to the lien of the Guaranteed Loan and the Direct Loan, but only with respect to sums which first become due on or after the date the lien of the Guaranteed Loan or Direct Loan, as applicable, is recorded. To the extent allowable by law, the sale or transfer of any Parcel pursuant to a mortgage foreclosure proceeding or the sale or transfer of such Parcel pursuant to a sale under power contained in a deed of trust on such Parcel, shall not extinguish the lien of any required payment which arise subsequent to the date of recordation of the mortgage or deed of trust, and any and all proceeds from such sale or transfer which exceed the debt and costs of collection secured by such Parcel, shall be due and payable to the Secretary to the extent of any payments so due on such Parcel; provided, however, any purchaser of any such Parcel at a mortgage foreclosure shall become, on the date of such purchase, the owner of a Parcel subject to all the terms and conditions of this Use Agreement. The foregoing subordination shall not relieve a Person whose Parcel has been mortgaged or subjected to a deed of trust from his obligation to pay any or all of the Security Deposit due during the time when he is or was the owner of such Parcel.

### **ARTICLE XIII. GENERAL PROVISIONS****ARTICLE XIII. GENERAL PROVISIONS****ARTICLE XIII. GENERAL PROVISIONS****ARTICLE XIII. GENERAL PROVISIONS**

56. **Recordation.**56. **Recordation.**56. **Recordation.**56. **Recordation.**  
Upon execution and delivery by the parties, this Use Agreement and all amendments and supplements to this Use Agreement shall be recorded and filed in the Land Records and in such manner and in such other places as the Secretary may reasonably request, and the Project Owner shall pay all fees and charges incurred in connection with such recordation. Any document which amends or evidences the termination of this Use Agreement shall also be recorded in the Land Records or in such other place of recording as may be required at the time of the execution of such instrument.

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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### 57. Amendments.57. Amendments.57. Amendments.57. Amendments.

a. This Use Agreement shall not be amended, revised, or terminated except by a written instrument, executed by the parties or their successors in title, and duly recorded in the Land Records or in such other place of recording as may be required at the time of the execution of such instrument. The Project Owner agrees, from time to time, to take such other actions and steps necessary to comply, and to cause the Property to comply with, and to enter into modifications and amendments to this Use Agreement to the extent required by any interpretation of the Applicable Laws which is final and non-appealable and binding on the Project Owner and the Property, and the parties agree that this Use Agreement shall be deemed to be automatically amended to impose such requirements pending execution of any such amendment. If the Project Owner fails to perform its obligations under this clause (a), the Secretary shall be authorized by the Project Owner (and is hereby appointed as its true and lawful attorney-in-fact, which such power shall be irrevocable and coupled with an interest) to execute, deliver and record, on behalf of the Project Owner, any such modification or amendment; provided that the Secretary shall take no action pursuant to this sentence without first notifying the Project Owner, in writing of its intention to take such action and without first providing the Project Owner, an opportunity to comply with the requirements of this clause (a).

b. Subject in all respects to the other provisions of this Use Agreement, the Secretary and the Project Owner may from time to time enter into one or more amendments or supplements to this Use Agreement for any of the following purposes:

- (1) To correct or amplify the description of the Project;
- (2) To evidence the succession of another person or entity to the Secretary or the Project Owner and the agreement by any successor to perform the covenants of their predecessor;
- (3) To make such changes to this Use Agreement to the extent required in order to comply with the Applicable Laws;
- (4) To cure any ambiguities, to correct or supplement any provisions of this Use Agreement which may be inconsistent with any other provision in this Use Agreement; or
- (5) To make any other provision with respect to matters or questions arising under this Use Agreement, which will not be inconsistent with the provisions of this Use Agreement, provided that such action will not adversely affect the interests of the Secretary, the Military Tenants or the Guaranteed Lender.

c. Notwithstanding any other provision of this Use Agreement, so long as any amounts due under the Guaranteed Loan remains outstanding and a Guaranteed Lender is not in default of its obligations under the Guaranty Agreement, this Use Agreement may not be amended by the parties, other than pursuant to subsection b above, without the express written consent of the

21Dec 98

K-1-43

## Appendix K-1

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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Guaranteed Lender.

**58. Relationship to Mortgage Loan Documents.** **58. Relationship to Mortgage Loan Documents.** **58. Relationship to Mortgage Loan Documents.** The terms, covenants and restrictions of this Use Agreement are and shall at all times remain superior, in all respects, to the liens, rights and interests created under any mortgage or other security interest granted by the Project Owner in, on or to, the Property, including the Guaranteed Loan Documents. Upon a conveyance or other transfer of title to the Property pursuant to a foreclosure (judicial or under power of sale) or deed in lieu of foreclosure under any such mortgage, including the Guaranteed Loan Documents, this Use Agreement shall remain in full force and effect. Any Person who acquires title to the Project pursuant to such foreclosure or deed in lieu of foreclosure shall acquire such title subject to the terms, covenants and restrictions of this Use Agreement, from and after the date on which such person acquires title to the Project.

**59. Notice.** **59. Notice.** **59. Notice.** **59. Notice.** Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Project Owner or the Secretary, shall be sufficiently given and shall be deemed given on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below. The Project Owner and the Secretary may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent. Any notice of the parties which may or is required for any matter under this Use Agreement shall be in writing.

The Project Owner:

The Secretary:

with a copy to:

**60. Books, Records, Accounts and Reports.** **60. Books, Records, Accounts and Reports.** **60. Books, Records, Accounts and Reports.**

a. The Project Owner agrees that the Comptroller General of the United States or the Auditor General of the United States Air Force or any of their duly authorized representatives shall, until the expiration of three (3) years after the expiration or earlier termination of this Use Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Project Owner involving transactions related to the Property.

b. Project Owner shall furnish to the Government all of the following:

(1) within one hundred twenty (120) days after the end of each fiscal year

## **Request for Proposals**

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

of the Project Owner, a copy of its annual financial statements prepared in accordance with generally accepted accounting principles and audited by a certified public accountant;

(2) within one hundred twenty (120) days after the end of each fiscal year of Project Owner, a statement of income and expenses for Project Owner's operation of the Property for that fiscal year, including calculations of "net cashflow" as defined in this Use Agreement;

(3) within thirty (30) days after the end of each quarter, (a) a statement of income and expenses for Project Owner's operation of the Property for the preceding quarter and projected for the upcoming quarter, and (b) statements of collections, disbursements and balances of operating, reserve and escrow accounts for the preceding quarter, presented for each month during the preceding and upcoming quarter, as applicable, including calculations of "net cashflow" as defined in this Use Agreement;

(4) after a default under this Use Agreement has occurred and is continuing, within fifteen (15) days after the end of each month, monthly income and expense statements for the Property, including calculations of "net cashflow" as defined in this Use Agreement;

(5) within one hundred twenty (120) days after the end of each fiscal year of Project Owner, a statement of changes in financial position of Project Owner relating to the Property for that fiscal year; a balance sheet showing all assets and liabilities of Project Owner relating to the Property as of the end of that fiscal year; a balance sheet, a statement of income and expenses for Project Owner and a statement of changes in financial position of Project Owner for that fiscal year;

(6) within thirty (30) days after the end of each quarter, and at any other time upon the request of the Government, a rent schedule for the Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any requested related information;

(7) within one hundred twenty (120) days after the end of each fiscal year of Project Owner, and at any other time upon the request of the Government, an accounting of all security deposits held pursuant to all Tenant Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for the Government to access information regarding such accounts;

(8) within one hundred twenty (120) days after the end of each fiscal year of Project Owner, and at any other time upon the request of the Government, a statement that identifies all owners of any interest in Project Owner and any entity having a 15% or greater interest in the Project Owner and the interest held by each, if Project Owner or any such entity is a corporation, all officers and directors of Project Owner and such entity, and if Project Owner or such entity is a limited liability company, all managers who are not members;

(9) within thirty (30) days after the end of each quarter, a monthly property management report for the Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants, materials relating to

K-1-45

## **Appendix K-1**

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

marketing and leasing efforts for the Property, and any other information requested by the Government;

(10) within thirty (30) days after the end of each quarter, a monthly maintenance report for the Property, showing the number of maintenance requests from tenants and the disposition of such requests, maintenance records and expenditures, and any other information requested by the Government;

(11) within thirty (30) days of their filing with the required federal, state or local agencies, all income, real and personal property and any other tax returns and any other tax filings relating to Project Owner and the Property;

(12) not less than ninety (90) day prior to the end of each calendar year, proposed operating and capital budget(s) for the Property for the upcoming calendar year, including estimated income, source of income and expenses, including taxes, insurance and replacement reserves, and identifying the assumptions underlying such budget(s).

(13) copies of any and all default or deficiency notices provided to the Project Owner by any approved mortgagee, any government agency, insurance company or other party promptly following Project Owner's receipt of same; and

(14) within fifteen (15) days after receipt of a request by the Government, such additional information, as reasonably requested by the Government

### 61. General Provisions61. General Provisions61. General Provisions61. General Provisions.

a. **Successors Bound.** The provisions of this Use Agreement shall extend to, bind and inure to the benefit of the Parties and their respective personal representatives, heirs, successors and assigns, provided that the Project Owner shall be prohibited from assigning all or any part of its right, title and interest under this Use Agreement without the prior written consent of the Secretary.

b. **Time; Performance of Obligations.** With respect to all obligations of the Project Owner or the Secretary under this Use Agreement, time is of the essence. In the computation of any period of time provided for in this Use Agreement or by law, the day of the act or event from which such period of time runs shall be excluded, and the last day of such period shall be included, unless it is not a Business Day, in which case the period shall be deemed to run until the end of the next day which is a Business Day. Each party hereby covenants to keep and perform faithfully all of its covenants and undertakings contained in this Use Agreement.

c. **Identification of Government Agencies, Statutes, Programs and Forms.** Any reference in this Use Agreement, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor or similar department, agency, statute, regulation, program or form.

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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d. **Further Action.** The parties shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Use Agreement.

e. **Applicable Law.** This Use Agreement shall be construed, and the rights and obligations of the Secretary and the Project Owner under this Use Agreement shall be determined, in accordance with the laws of the State of Georgia.

f. **Integration.** This Use Agreement constitutes the entire agreement among the parties pertaining to the subject matter of this Use Agreement, and supersedes all prior agreements and understandings pertaining to this subject matter. No covenant, representation or condition not expressed in this Use Agreement shall affect or be deemed to interpret, change or restrict the express provisions of this Use Agreement.

g. **Approvals.** Any approval or consent of the parties required for any matter under this Use Agreement shall be in writing and shall not be unreasonably withheld or delayed unless otherwise indicated in this Use Agreement.

h. **Exhibits.** All Exhibits to this Use Agreement are incorporated into and made a part of this Use Agreement by reference.

i. **Conflicts.** The terms of this Use Agreement, the Solicitation and the Selected Proposal are intended to be consistent and should be so construed. However, in the event of any ambiguity or inconsistency between the Solicitation, the Selected Proposal and this Use Agreement, this Use Agreement shall be controlling.

j. **Survival.** The obligations of the parties shall survive the delivery of a deed from the Secretary to the Project Owner with respect to any or all of the Land.

k. **Severability.** If any provision of this Use Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement of the Secretary or the Project Owner contained herein shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Secretary or Project Owner to the full extent permitted by law.

l. **Multiple Counterparts.** This Use Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original. This Use Agreement shall be binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart.

m. **Delay or Omission Not Waiver; Remedies Not Exclusive.** No delay or omission of a Party to exercise any right or remedy provided under this Use Agreement upon a default of the other party (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of or acquiescence in any such default. Every right and remedy given

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

by this Use Agreement or by law to a party may be exercised from time to time, and as often as may be deemed expedient by such party. No remedy conferred in this Use Agreement or reserved to the Secretary is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Use Agreement or now or hereafter existing at law or in equity or by statute.

n. **Third Party Beneficiaries.** Other than the Military Tenants, there shall be no third party beneficiaries of this Use Agreement. Specifically, none of the provisions of this Use Agreement shall be for the benefit of, or enforceable by, any creditors of the Project Owner.

o. **No Individual Liability of Government Officials.** No covenant or agreement contained in this Use Agreement shall be deemed to be the covenant or agreement of any individual officer, agent, employee or representative of the Secretary, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Use Agreement, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

**IN WITNESS WHEREOF**, the Secretary and the Project Owner have executed this Use Agreement as of the date first above written.

Signed, sealed and delivered  
in the presence of:

[NAME OF PROJECT OWNER]

\_\_\_\_\_  
Witness

By:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
(NOTARY PUBLIC SEAL)

**Request for Proposals**

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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Signed, sealed and delivered  
in the presence of:

**THE SECRETARY OF THE AIR FORCE**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Jimmy G. Dishner  
Deputy Assistant Secretary of the Air  
Force (Installations)

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
(NOTARY PUBLIC SEAL)

## **Request for Proposals**

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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### **EXHIBIT A**

#### **Legal Description of the Land**

## **Request for Proposals**

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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### **EXHIBIT B**

#### **List of Prohibited Uses**

## **Request for Proposals**

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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### **EXHIBIT C**

#### **Form of Tenant Lease**

## **Request for Proposals**

Solicitation Number F09650-90-R-0207

West Robins Housing Privatization Project, UHHZ 974012

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### **EXHIBIT D**

#### **Housing Unit Mix and Designation by Pay Grade**

## Request for Proposals

Solicitation Number F09650-90-R-0207  
West Robins Housing Privatization Project, UHHZ 974012

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### EXHIBIT E

#### Applicable Percentage by Housing Unit Type

Unit Type	Applicable Percentage
2 bedroom, 1 bath townhouse	_____ %
3 bedroom, 2 bath townhouse	_____ %
ETC.	